

STATE OF TEXAS VS. RUBEN GUTIERREZ

73462

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REPORTER'S RECORD

VOLUME 10 OF 32 VOLUMES

TRIAL COURT CAUSE NO. 98-CR-1391-A

- - - - - x  
: THE STATE OF TEXAS : IN THE DISTRICT COURT  
: VS. : 107TH JUDICIAL DISTRICT  
: RUBEN GUTIERREZ : CAMERON COUNTY, TEXAS  
: - - - - - x

INDIVIDUAL VOIR DIRE

On the 30th day of March, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Benjamin Euresti, Jr., Judge Presiding, held in Brownsville, Cameron County, Texas.

Proceedings reported by machine shorthand.

A P P E A R A N C E S

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ORIGINAL

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9 AND

10 HON. DANIEL R. REYES  
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## STATE OF TEXAS VS. RUBEN GUTIERREZ

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MARCH 30, 1999

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1 P R O C E E D I N G S

2 (Open court, defendant present)

3 THE COURT: All right. You may be seated.  
4 Okay. Let the record reflect that the defendant is  
5 present in the courtroom; that after consultation with  
6 the lawyers in this case, the jurors that were voir dired  
7 in his absence have been recalled and he's being given an  
8 opportunity to view these jurors and make any comments.

9 And we'll begin with Anita Anaya who was  
10 the first juror called in his absence yesterday; and all  
11 the other jurors will be recalled in the same order as  
12 before.

13 Do you have any comments?

14 MR. REYES: No, Your Honor.

15 MS. FISCHER: Judge, juror number 31, if  
16 you want to go ahead and put on the record that he  
17 presented a medical excuse yesterday and the Court  
18 excused him based on that. The State does not object to  
19 that.

20 THE COURT: Yes. Juror number 31, Richard  
21 Santana, presented a doctor's excuse. He was injured, as  
22 the record will recall, after the general voir dire; and  
23 the Court granted him a medical excuse. And I do not  
24 think there was any --

25 MS. FISCHER: The State does not object to

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4

1 him being excused.

2 MR. REYES: We didn't object either, Your  
3 Honor, to him being excused.

4 THE COURT: All right. Are you ready to  
5 proceed?

6 MR. REYES: We're ready to proceed.

7 MS. FISCHER: State's ready.

8 THE COURT: Bring Ms. Anaya in.

9 THE BAILIFF: Yes, Your Honor.

10 THE COURT: Good morning, Ms. Anaya.

11 MS. ANAYA: Good morning.

12 THE COURT: I'm sorry to bring you back,  
13 but there's some matters that we have to put on the  
14 record; and I apologize for the inconvenience.

15 MS. ANAYA: No. That's okay.

16 THE COURT: You may proceed.

17 MS. FISCHER: Thank you, Judge.

18 ANITA ANAYA,

19 having been called as a prospective juror and, upon  
20 her oath, was examined and testified as follows:

21 VOIR DIRE EXAMINATION

22 BY MS. FISCHER:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. I'm Karen Fischer. You probably remember who I

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5

1 am. This is Mr. Blaylock, the same folks that were here  
2 yesterday.

3 I'm not going to ask you a whole lot of  
4 questions, ma'am. When we spoke yesterday, basically  
5 after I had explained the law to you about not only the  
6 guilt/innocence phase of the trial but also what was  
7 going to happen in punishment, you told me that you could  
8 be fair and impartial. Is that still your feelings here  
9 today?

10 A. Yes.

11 Q. Okay. Has anything changed -- we asked you a  
12 lot of questions yesterday. After going home last night  
13 and thinking about things, have any of your answers  
14 changed or any of your feelings about this case changed  
15 in any way?

16 A. No.

17 Q. Okay. What about your feelings about the death  
18 penalty? After thinking about it and knowing that it's a  
19 potential punishment here, have any of your feelings  
20 about the death penalty changed?

21 A. No.

22 Q. Okay. So when I ask you can you be fair and  
23 answer the questions we ask you honestly regardless of  
24 how you feel about the death penalty, can you do that?

25 A. Yes.

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6

1           Q.    Anything else that you want to tell me,  
2   anything that you may have thought of last night that you  
3   might think important for me to know about whether or not  
4   you can be a fair and impartial juror in this case?

5           A.    No, I don't have anything.

6                       MS. FISCHER:  I don't have any further  
7   questions.

8           Q.    (BY MS. FISCHER)  Thank you, ma'am.

9           A.    Thank you.

10                   THE COURT:  Mr. Reyes?

11                   MR. REYES:  May I proceed?

12                               **VOIR DIRE EXAMINATION**

13   **BY MR. REYES:**

14           Q.    Ms. Anaya, good morning.

15           A.    Good morning.

16           Q.    I don't remember if you remember, my name is  
17   Daniel Reyes; and we represent -- Mr. Galarza and I  
18   represent Mr. Gutierrez in this case.

19                       We just needed to ask you some additional  
20   questions.  I hope you weren't inconvenienced by having  
21   to come back.  I'll be asking you some questions again.  
22   If you don't understand one of my questions, just let me  
23   know and I'll go ahead and rephrase it; is that okay?

24           A.    Okay.

25           Q.    Now, yesterday we talked about some general

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1 principles of law; for example, the indictment. Remember  
2 that?

3 A. Uh-huh.

4 Q. And how it's no evidence against a person. And  
5 you stated that you'd be able to follow the instructions  
6 of the Court, that that indictment is absolutely no  
7 evidence against a person; is that correct?

8 A. Yes.

9 Q. Okay. And that hasn't changed since yesterday?

10 A. No.

11 Q. Okay. And we talked about the presumption of  
12 innocence, that everybody that's charged with a crime is  
13 presumed innocent until and only if they prove him guilty  
14 and that presumption will be overcome. Do you remember  
15 that?

16 A. Uh-huh. Yes, I do.

17 Q. And you said you agreed with that; is that  
18 correct?

19 A. Yes.

20 Q. And has anything changed since yesterday?

21 A. No.

22 Q. Okay. We talked about beyond a reasonable  
23 doubt, which is the definition that is before me, and  
24 also the -- how it is -- or that's the burden that the  
25 State of Texas has to meet before you can say that a



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1 person is guilty. Do you recall that?

2 A. Yes.

3 Q. And has anything changed from yesterday with  
4 respect to your answers to this definition?

5 A. No.

6 Q. And you'd still be willing today, if selected  
7 as a juror, to hold the State as to its burden?

8 A. Yes.

9 Q. We talked about the elements also, which are  
10 over here --

11 A. Uh-huh.

12 Q. -- yesterday. Remember that they had to prove  
13 all six. If they don't prove even one of those, you have  
14 to say by your verdict not guilty. Do you remember that?

15 A. Yes.

16 Q. And has anything -- you stated that -- you  
17 stated yesterday that if the State failed to prove at  
18 least one of those elements, that you would say by your  
19 verdict not guilty. Do you remember that?

20 A. Yes, I do.

21 Q. Okay. And you're still in agreement with that  
22 today?

23 A. Yes.

24 Q. We talked about the special issues which are in  
25 front of you. Remember that we gave you the number of

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1 votes that would be required, and how it is that the  
2 jurors would have to reach a decision with respect to  
3 each of the special issues. Do you remember that?

4 A. Yes.

5 Q. Okay. With respect to your answers that you  
6 gave us yesterday, has anything changed since yesterday?

7 A. No.

8 Q. You'll still be able to follow the law and be  
9 able to answer those three questions based on what's  
10 presented to you in court?

11 A. Yes.

12 Q. We also talked about a person's right to remain  
13 silent, and you agreed with that constitutional right; is  
14 that correct?

15 A. Yes.

16 Q. And you also agreed that we have a right not to  
17 present any evidence, and also a right not to talk to --  
18 Mr. Gutierrez does not have to testify. And you agreed  
19 with that; is that correct?

20 A. Yes.

21 Q. And are you still in agreement with that today?

22 A. Yes.

23 Q. We talked about codefendant testimony of some  
24 codefendant. Another defendant might get a deal to come  
25 testify against the accused who's on trial. Do you

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10

1 remember that?

2 A. Yes, I do.

3 Q. Okay. And would you still be able to take into  
4 consideration whatever deal that person might get in  
5 reaching a decision as to whether or not to believe that  
6 person? Will you still be able to do that? Just take it  
7 into consideration and then make a decision as to whether  
8 or not you believe what they're saying.

9 A. Yes.

10 Q. You'll still be able to do that?

11 A. Uh-huh.

12 Q. And you have not formed an opinion as to this  
13 case; is that correct?

14 A. No.

15 Q. And you haven't heard anything about this case?

16 A. No.

17 Q. And you also stated yesterday that the fact  
18 that you work at Valley Baptist Medical Center, that  
19 would not affect you with respect to whether or not you  
20 believe a doctor more than you would another person; is  
21 that correct?

22 A. Excuse me. Can you repeat that, please?

23 Q. You work at Valley Baptist Medical Center --

24 A. Yes.

25 Q. -- is that correct?

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11

1 A. Uh-huh.

2 Q. And the fact that you work with doctors, that  
3 wouldn't affect the way you view their testimony in  
4 court?

5 A. No.

6 Q. You would judge them just as you would judge  
7 anybody else?

8 A. Yes.

9 Q. And you'd be able to hold the State to its  
10 burden of proof? Because in your questionnaire you  
11 stated that you would hold them to a higher burden, but  
12 the burden is beyond a reasonable doubt. You'd be able  
13 to set your feeling aside and then just require for them  
14 to prove their case beyond a reasonable doubt; is that  
15 correct?

16 A. Yes.

17 Q. And you would be willing to deliberate as a  
18 juror with the rest of the jurors and then make a  
19 decision; is that correct?

20 A. Yes, I understand that.

21 Q. Okay. Anything else that you wanted to go  
22 ahead and tell us, you know, that we didn't discuss  
23 yesterday?

24 A. No.

25 Q. Thank you so much for your time, Ms. Anaya.

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1 Appreciate it.

2 A. Okay.

3 MR. REYES: We have nothing further, Your  
4 Honor.

5 MS. ANAYA: Thank you.

6 THE COURT: Yes. Go ahead and step out.

7 MS. ANAYA: Okay.

8 (Prospective juror left the courtroom)

9 THE COURT: Is this juror acceptable to  
10 the State?

11 MS. FISCHER: Your Honor, at this time the  
12 State would use a peremptory strike against this juror.  
13 We're going to use a peremptory. No, not acceptable.

14 MR. REYES: Okay.

15 THE COURT: That'll be number five for the  
16 State.

17 MS. FISCHER: Yes Your Honor.

18 THE COURT: Okay. Bring her in.

19 THE BAILIFF: Yes, Your Honor.

20 THE COURT: Okay. Ms. Anaya, that's all  
21 we have for you today. We appreciate you coming back;  
22 and again, excuse us for the inconvenience.

23 MS. ANAYA: Okay. Thank you.

24 THE COURT: Thank you.

25 THE BAILIFF: I'll check and see if

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1 Ms. Caldera is out there.

2 THE COURT: Okay.

3 THE BAILIFF: No answer, Your Honor.

4 THE COURT: Okay. We'll wait for her to  
5 get here. We'll be in recess.

6 (Recess taken from 9:05 a.m. to 9:41 a.m.)

7 THE COURT: Where is the D.A.?

8 MR. GALARZA: He should be -- he was just  
9 right next door.

10 MS. FISCHER: We're here, Judge. I'm  
11 sorry.

12 THE COURT: All right. Bring her in.  
13 Good morning, Ms. Caldera.

14 MS. CALDERA: Good morning.

15 THE COURT: First of all, I need to  
16 apologize for bringing you back, but there's some matters  
17 we have to put on the record; and I apologize for that.

18 MS. CALDERA: All right.

19 THE COURT: And the lawyers just have a  
20 few more questions for you, okay?

21 MS. CALDERA: All right.

22 THE COURT: Thank you.  
23 Go ahead.

24

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**LYDIA CALDERA,**

having been called as a prospective juror and, upon  
her oath, was examined and testified as follows:

**VOIR DIRE EXAMINATION**

**BY MR. BLAYLOCK:**

Q. Good morning, Ms. Caldera.

A. Good morning.

Q. We talked at length yesterday. Do you remember  
that?

A. Yes.

Q. How is your mom doing?

A. Oh, she's doing all right.

Q. All right?

A. Yes, all right.

Q. Okay. Let me ask you this. It may seem like a  
silly question, but is she substantially better today  
than she was yesterday where you don't need to take care  
of her anymore?

A. Oh, no. She's not -- I mean, she's all right,  
you know, but she needs to be taken care.

Q. Okay. So you -- and you've had a night to  
sleep on this and think about all your answers to  
yesterday, right?

A. Yes.

Q. Okay. And so, you're still saying that you

1     couldn't concentrate as a jury -- a juror here because  
2     your mom is sick and she needs your care?

3             A.     I still say that because really and truly, this  
4     morning I even had some mess with some papers and all  
5     that, you know, because I'm the one that has to take care  
6     of all that.

7             Q.     Uh-huh.

8             A.     So that's why I'm still, you know, saying the  
9     same thing.

10            Q.     All right. And pardon us for calling you back,  
11     ma'am, but we just want to check on just a few more  
12     things to make sure.

13                   And so you're still 100 percent -- you're  
14     saying, "I couldn't concentrate, Judge, because of my  
15     mom's condition. I've got to take care of her"?

16            A.     Yes, sir.

17            Q.     Okay. And you also said yesterday -- well,  
18     correct me if I'm wrong -- that you had a religious  
19     opposition to the death penalty.

20            A.     Well, yes, I do --

21            Q.     Okay.

22            A.     -- because -- and especially during these days,  
23     you know --

24            Q.     Right.

25            A.     -- it's terrible.



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1 Q. And the Judge asked you real explicitly. He  
2 said, "Ms. Caldera, due to your religious beliefs, would  
3 that make you an unfair juror in this case?"

4 A. Yes.

5 Q. And is that still -- well, what's your answer  
6 to that today?

7 A. Still the same.

8 Q. 100 percent?

9 A. Yes.

10 Q. You're not going to change that?

11 A. No.

12 Q. Okay. Now, you also said on -- yesterday that  
13 you would want the State in a case like this, if you were  
14 a juror, to prove it beyond all doubt. Not just a  
15 reasonable doubt. You said all doubt. And you were very  
16 sure of that. Are you still sure of that?

17 A. If I was a juror, yes.

18 Q. Okay. And you wouldn't come down off that?

19 A. I don't think so.

20 Q. Okay. I noticed you just looked over at the  
21 defendant. You notice that he's here right now, right?

22 A. Uh-huh.

23 Q. Okay. And you wouldn't come off that holding  
24 us to a higher burden by him being here?

25 A. No.

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17

1 Q. Okay. Good. And you say you have eye  
2 problems, too?

3 A. I sure do.

4 Q. You said you had one eye -- one eye was worse  
5 than the other?

6 A. Yes. And I have to go to the specialist,  
7 especially this week that I'm off from school, you know,  
8 because I'm having problems.

9 Q. Okay. And --

10 A. That's what I need to do.

11 Q. Correct me if I'm wrong, I think you said last  
12 time that your eye problem would cause -- would affect  
13 your ability to concentrate if you were a juror in this  
14 case?

15 A. Well, it really does affect for everything --

16 Q. Okay.

17 A. -- not only for -- you know, it's affecting me.  
18 It's really affecting me.

19 Q. And I appreciate that. Now that you've had a  
20 day to think about everything that you said yesterday,  
21 would you change any answer to any question that I asked  
22 you yesterday?

23 A. No, sir.

24 Q. Okay.

25 MR. BLAYLOCK: That's all I have, Judge.

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1 MR. GALARZA: May I proceed, Your Honor?

2 THE COURT: You may.

3 MR. BLAYLOCK: At this time, though,  
4 Judge, I -- well, never mind.

5 THE COURT: Go ahead.

6 VOIR DIRE EXAMINATION

7 BY MR. GALARZA:

8 Q. Ms. Caldera, good morning.

9 A. Good morning.

10 Q. Again, we thank you for being here; and we're  
11 sorry we inconvenienced you.

12 We -- yesterday we introduced ourselves.  
13 Daniel Reyes is to my right and I'm Santiago Galarza.  
14 I'm just going to be asking you a few questions.

15 You stated in your questionnaire that you  
16 have some projects in progress that affect your ability  
17 to concentrate, which include also taking care of your  
18 mother; is that correct?

19 A. Yes, sir.

20 Q. You would not be able to set that aside in  
21 order to sit here on the jury and just concentrate on the  
22 jury; is that correct?

23 A. Well, I already said it, you know. And that's  
24 the only thing, you know, that affects, you know, because  
25 all those little problems, you know, with my mom and, you

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19

1 know, me all by myself, you know, trying to do all that.  
2 It's hard.

3 Q. So because of the reason that you need to go  
4 ahead and take care of your mom, you're concerned about  
5 your mom, you would not be able to give your full  
6 attention and concentrate on the case?

7 A. That's one of the things. Uh-huh.

8 Q. Okay. In addition, I believe you stated that  
9 you would ask that the State prove their case beyond all  
10 doubt; is that correct?

11 A. Yes, sir.

12 Q. Okay. I went through beyond a reasonable  
13 doubt. Beyond a reasonable doubt, I advised you what you  
14 would have to use is just your common sense. Do you  
15 remember that?

16 Beyond a reasonable doubt, what the State  
17 needs to prove is beyond a reasonable doubt which is just  
18 using your common sense and listening to the testimony.

19 A. Yes.

20 Q. Okay. By what you're stating at this time is  
21 what you would require the State to prove is beyond all  
22 doubt; is that correct?

23 A. Beyond all doubt, yes.

24 Q. Okay. Especially because it's a real serious  
25 case; it's a capital murder case?

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20

1           A.     Sure.  Yes.  Uh-huh.

2           Q.     You also stated that because of your religion,  
3 you think it would affect you in trying to go ahead and  
4 sit in this type of case?

5           A.     Yes.

6           Q.     Okay.  Has that changed at all?

7           A.     No.  No.  Especially these days, you know, I  
8 mean, I still feel, you know, the same, you know.

9           Q.     Okay.  And for this reason, you would not be  
10 able to sit in this case?  Because one of the  
11 requirements, one of the things that might happen is that  
12 this person might receive the death penalty.  And your  
13 feelings are that you cannot sit in this type of case; is  
14 that correct?

15          A.     Yes, sir.

16          Q.     Okay.  Would you be able to set any of these  
17 feelings aside and just sit on this case at all?

18          A.     I really don't -- I don't think so.

19          Q.     Okay.  I need just a yes or no.  If it's no,  
20 I'm just trying to go ahead and get an answer from you.

21          A.     No.

22          Q.     You would not be able to do that?

23          A.     No.

24                   MR. GALARZA:  That's all I have at this  
25 time, Your Honor.

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21

1 MR. BLAYLOCK: Judge, again, because of  
2 her religious opposition to the death penalty, because  
3 she would hold the State to a higher burden, because of  
4 her eye problem, because of the fact she needs to take  
5 care of her mom, I ask that she be excused to take care  
6 of her mom.

7 MR. GALARZA: There was no objection to  
8 her being excused, Your Honor.

9 THE COURT: All right. Ms. Caldera, thank  
10 you for coming back. We appreciate your time. At this  
11 time you're excused to go.

12 MS. CALDERA: Thank you very much.

13 THE COURT: Thank you.

14 MR. GALARZA: Thank you again.

15 MS. CALDERA: And I'm with you.

16 MR. BLAYLOCK: You're done this time,  
17 ma'am. I don't think we'll call you back.

18 MS. CALDERA: All right. Thank you very  
19 much, okay?

20 MR. BLAYLOCK: Take care of your mom.

21 MS. CALDERA: I'm going there right now.

22 THE COURT: Okay. We need Mr. Escobedo.  
23 I don't think he's here.

24 THE BAILIFF: No answer, Your's Honor.

25 THE COURT: Okay. We'll wait for him to

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22

1 get here.

2 (Recess taken from 9:47 a.m. to 9:57 a.m.)

3 THE COURT: All right. You may be seated.  
4 Bring Mr. Escobedo in.

5 THE BAILIFF: Yes, sir.

6 THE COURT: Good morning, Mr. Escobedo.

7 MR. ESCOBEDO: Good morning, sir.

8 THE COURT: First of all, let me apologize  
9 for bringing you back. There's a few things that we need  
10 to put on the record; and I appreciate you coming back.

11 MR. ESCOBEDO: No problem, sir.

12 THE COURT: Have a seat.

13 MR. ESCOBEDO: Thank you.

14 THE COURT: Go ahead.

15 MS. FISCHER: Thank you, Judge.

16 ERIC ESCOBEDO,

17 having been called as a prospective juror and, upon  
18 his oath, was examined and testified as follows:

19 VOIR DIRE EXAMINATION

20 BY MS. FISCHER:

21 Q. Good morning, Mr. Escobedo.

22 A. Good morning.

23 Q. How are you doing?

24 A. Good.

25 Q. You remember who I am? I'm Karen Fischer; this

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23

1 is John Blaylock.

2 MR. ESCOBEDO: Hello.

3 Q. (BY MS. FISCHER) When we spoke yesterday, you  
4 understood the importance of being fair and impartial on  
5 all the legal issues; that included the proof in this  
6 case beyond a reasonable doubt. You understood that that  
7 was the law and you had to follow that.

8 You also understood about your feelings  
9 about the death penalty --

10 A. Yes.

11 Q. -- and that you had to follow the law, and  
12 answer the questions honestly, and make a decision based  
13 on what you heard in the case, okay?

14 A. Yes.

15 Q. With that being the most important thing,  
16 knowing that you have to be fair and impartial, is there  
17 anything that you had told us yesterday, after going home  
18 and sleeping on it and thinking about things, anything  
19 different about your feelings here today? Maybe your  
20 feelings about the laws or anything that has changed  
21 about how you felt yesterday.

22 A. No, ma'am.

23 Q. Okay. What about your feelings about the death  
24 penalty?

25 A. I stand the same as yesterday.



1 Q. Basically the same?

2 A. Yes.

3 Q. Okay. And if the Judge instructs you on the  
4 law, then you have to follow the law. And you can do  
5 that?

6 A. Exactly. Yes.

7 Q. Okay. Is there anything else that you may have  
8 thought of that you didn't tell us yesterday, things that  
9 may have come up or questions you may have about the  
10 process, or something I may need to know about you so  
11 that we can have a fair and impartial jury?

12 A. No, ma'am.

13 Q. All right.

14 MS. FISCHER: I don't have any further  
15 questions, Judge.

16 MR. REYES: May I proceed, Your Honor?

17 THE COURT: You may.

18 VOIR DIRE EXAMINATION

19 BY MR. REYES:

20 Q. Mr. Escobedo, good morning again.

21 A. Good morning, sir.

22 Q. We apologize. I hope we didn't inconvenience  
23 you.

24 A. That's no problem.

25 Q. We just needed to ask you some additional

1 questions. And again, if you don't understand one of my  
2 questions, just let me know and I'll go ahead and  
3 rephrase them.

4 A. Okay.

5 Q.. The first thing that I wanted to start off with  
6 is do you know anybody that works with the District  
7 Attorney's Office, be it an investigator or secretary,  
8 paralegal or an attorney?

9 A. No, sir.

10 Q. Okay. What about the name of witnesses that  
11 were named on Tuesday of last week and the four  
12 additional witnesses that we named yesterday?

13 A. No, sir, I don't.

14 Q. Thinking about those names, did they ring a  
15 bell at all?

16 A. No, sir.

17 Q. Now, we talked yesterday about the indictment.  
18 Remember that? And I told you that an indictment under  
19 our law is absolutely no evidence against a person -- is  
20 absolutely no evidence against a person that's accused of  
21 a crime. Do you remember that?

22 A. Uh-huh.

23 Q. And that basically tells the person what  
24 they're accused of specifically; and it also tells the  
25 State what it is they have to prove to the jury beyond a

1 reasonable doubt.

2 A. (Nods head).

3 Q. In thinking about that, has your opinion  
4 changed at all?

5 A. No, sir.

6 Q. And yesterday your opinion was that you agreed  
7 with those principles; is that correct?

8 A. Yes, sir.

9 Q. We talked about the presumption of innocence,  
10 the constitutional right that every person that is  
11 accused of a crime, be it a misdemeanor, a traffic ticket  
12 all the way up to murder or capital murder, that  
13 presumption is given to every person that's accused of a  
14 crime. Did you agree with that?

15 A. Yes, sir.

16 Q. And I told you that that presumption stays with  
17 the individual up until all the evidence has been  
18 presented; and it can only be overcome if the State of  
19 Texas presents enough evidence to the jury to convince  
20 them beyond a reasonable doubt. Did you understand that?

21 A. Yes, sir.

22 Q. And you agreed with that yesterday?

23 A. Yes, sir.

24 Q. Okay. In thinking about it since yesterday,  
25 has your opinion changed at all?

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1 A. No, sir.

2 Q. We talked about beyond a reasonable doubt which  
3 is the definition that's before me. And the reason I  
4 bring that up again is because in question 72 of your  
5 questionnaire on page 16, you state on there, "Should the  
6 State be required to prove their case beyond all doubt in  
7 a capital murder case?" And your answer was, "Yes."

8 A. Uh-huh.

9 Q. And the reason we ask this question is because  
10 some people might be thinking, "Well, if it's a speeding  
11 ticket or if it's, you know, a misdemeanor assault, or  
12 burglary of a habitation, or a burglary of a building  
13 case," do you see how that might not be considered in  
14 some people's minds as serious as maybe a murder or a  
15 capital murder?

16 A. (Nods head).

17 Q. So some people in their minds might be  
18 thinking, "Well, because it's a more serious case, I'm  
19 going to require the State to prove their case, you know,  
20 beyond all doubt. I don't want to have any doubt in my  
21 mind whatsoever." Do you see where that could happen?

22 A. Yes.

23 Q. My question to you yesterday was whether you'd  
24 be able to set that opinion aside and follow the law  
25 which is beyond a reasonable doubt.

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1           A.    Yes, sir.

2           Q.    Would you hold the State to that burden of  
3 proof?

4           A.    No.

5           Q.    Did you have any questions? I know that this  
6 definition seems kind of simple, but it really isn't  
7 because there's several things that you have to look at.  
8 For example, you have to, you know, use your reason and  
9 your common sense, and carefully and impartially consider  
10 everything that's presented to you. Do you see that?

11          A.    Yes, sir.

12          Q.    And we're not required to present any evidence  
13 to you. But at the same time if we do present witnesses,  
14 photographs, reports, anything like that, would you be  
15 willing to take those into consideration in making a  
16 decision?

17          A.    Yes, sir.

18          Q.    We talked about the elements. And remember we  
19 said that that definition needs to be applied to number  
20 one. That definition -- look at the evidence, consider  
21 it, and see if the State of Texas proved element number  
22 one to you beyond a reasonable doubt. Do you see that?

23          A.    (Nods head).

24          Q.    And you have to take that definition, apply it  
25 to the evidence, the facts that are presented to you,

1     apply it to number two, which is on or about  
2     September 5th of 1998, and see if they convinced you  
3     beyond a reasonable doubt. And you go -- you follow that  
4     procedure with respect to three, four, five and six. Did  
5     you understand that?

6             A.     Yes, sir.

7             Q.     And if you were to be selected as a juror, if  
8     the State failed to prove one of those six elements,  
9     would you be able to come back with a verdict of not  
10    guilty?

11            A.     Yes, sir.

12            Q.     And you honestly feel that way?

13            A.     Yes, sir.

14            Q.     Okay. The reason I ask that is because some  
15    people might be thinking, "Well, this is a capital murder  
16    case." And you can tell from the indictment more or less  
17    some of the facts of the case.

18                   And they might be thinking, "Well,"  
19    because in their mind, a juror might be thinking it's  
20    very serious. "Even though they didn't prove element  
21    number six, they proved a burglary of a house instead of  
22    a robbery, I'm still going to give it to the State  
23    because in my mind there was another felony committed."  
24    Do you see where that could happen?

25            A.     Yes, sir.

1 Q. Would you be of that -- would you be thinking  
2 like that?

3 A. Yes, sir.

4 Q. Would you be thinking like that or --

5 A. I would study it the best that I could.

6 Q. So if in your mind they didn't convince you  
7 that a robbery occurred -- let's say they convince you  
8 that a burglary of a house happened instead of a robbery,  
9 do you see how they're not meeting element number six?

10 A. Uh-huh.

11 Q. Okay. So based on that, what would your  
12 verdict have to be?

13 A. Not guilty.

14 Q. And do you feel that you would be able to do  
15 that?

16 A. Yes, sir.

17 Q. Knowing that this is a capital murder case?

18 A. Yes, sir.

19 Q. Would you have any kind of problems doing that?

20 A. I don't think I would.

21 Q. Do you see how I would need a more definite  
22 answer? Because if you can't follow the law, right now  
23 is the time for us to know because once you're seated as  
24 a juror, we can't ask you any questions. And if you  
25 can't give me a definite answer right now, do you see how

1 I wouldn't know how it is that you're thinking?

2 A. Yes, sir.

3 Q. So if they didn't prove one of those six  
4 elements to you, they only proved five for example, your  
5 verdict under the law would have to be not guilty.

6 A. Not guilty.

7 Q. Would you have any problem following that  
8 instruction?

9 A. No, sir.

10 Q. And we talked also about that in Texas we have  
11 a bifurcated trial system. It's basically a two-part  
12 trial. Do you remember that?

13 A. Uh-huh.

14 Q. And we said that you only get to Special  
15 Issues 1, 2 and 3 if you find somebody guilty of capital  
16 murder. If you find somebody guilty of murder or  
17 robbery, which are lesser included offenses, you don't  
18 even have to worry about these questions.

19 And the ranges of punishment for murder  
20 are five years to 99 years or life imprisonment; for  
21 robbery it's two to 20, or any number of years in  
22 between.

23 Would you be willing to listen to the  
24 evidence, and then make a -- consider the full ranges of  
25 punishment, and then make a decision as to what



1 punishment to set, if any?

2 A. Yes, sir.

3 Q. We talked about the special issues. Remember  
4 we focused, for example, on Number 1 about probability.  
5 And you agreed with me that it was more likely than not,  
6 right?

7 A. Yes, sir.

8 Q. And basically what it's asking you to do is to  
9 predict the future. Did you agree with me?

10 A. Yes, sir.

11 Q. Because we can't tell the future. And  
12 basically what it's asking you to do is look into the  
13 future and see whether or not he would commit future acts  
14 of violence; and if he would, that would make him a  
15 continuing threat to society. Did you agree with me?

16 A. Yes, sir.

17 Q. And do you see how it's basically asking you to  
18 punish an individual in this case for something that  
19 might not even happen in the future? Do you see that?

20 A. Yes, sir.

21 Q. And we went on to Question Number 2. And I  
22 told you that in this State just because you go in with  
23 somebody into a Circle K and you shoot -- one of those  
24 two persons shoots somebody, it doesn't necessarily and  
25 automatically make the two people guilty of the murder.

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1 They might be guilty of the theft when they went in there  
2 to steal cigarettes, remember?

3 A. Uh-huh.

4 Q. But it doesn't necessarily make them  
5 automatically guilty. Do you understand that?

6 A. Yes, sir.

7 Q. And they have to show, one, that the person  
8 actually killed the victim. If they didn't, they have to  
9 show that he intended to kill that victim. And if they  
10 can't prove that, then they at least have to prove that  
11 he anticipated that a human life would be taken. Do you  
12 remember that?

13 A. Yes, sir.

14 Q. And would you be willing to follow that  
15 instruction of the Court and use the facts to see whether  
16 or not the State met its burden of proof with respect to  
17 Question Number 2?

18 A. Yes, sir.

19 Q. I told you that you don't even get to Question  
20 Number 3 if you answer "no" to either 1 or 2. Remember  
21 that?

22 A. Yes, sir.

23 Q. But if you answer "yes" to Number 1 and answer  
24 "yes" to Number 2, then you have to come and you have to  
25 look at Question Number 3.

1                   And basically what it's asking you, "Is  
2   there any one reason or set of reasons that are in your  
3   mind sufficiently mitigating to give that person a life  
4   sentence and not the death penalty?" Did you understand  
5   that?

6           A.    Yes, sir.

7           Q.    And did you understand that it's asking you to  
8   look at all the evidence? You know, what the State  
9   introduces -- we don't have to present any evidence, but  
10   if we do present it, would you be willing to consider  
11   that in answering these questions?

12          A.    Yes, sir.

13          Q.    It's asking you to look at the circumstances of  
14   the offense; for example, if the person actually -- was  
15   he the shooter or was he just present, to look at those  
16   things in determining whether or not how you're going to  
17   answer that question. Do you see that?

18          A.    Yes, sir.

19          Q.    And would you be willing to do that?

20          A.    Yes, sir.

21          Q.    It's asking you to look at the character and  
22   the background of the individual, you know, what type of  
23   person is he, does -- did he go to school, was he a  
24   dropout, did he have any educational problems, is that  
25   why he's a dropout, does he have any psychological,

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1 psychiatric problems, all those things. Do you remember  
2 that?

3 A. Yes, sir.

4 Q. Would you be willing to take those into  
5 consideration in answering that question?

6 A. Yes, sir.

7 Q. And the personal moral culpability of the  
8 defendant, is there -- did he show remorse, you know, is  
9 he sorry for what happened. Would you be willing to look  
10 at that and then make a decision as to how to answer that  
11 question?

12 A. Yes, sir.

13 Q. We talked to you about a person's right to  
14 remain silent. Do you remember that?

15 A. Yes, sir.

16 Q. It's a constitutional right that every person  
17 has if they're accused of a crime. And did you agree  
18 with me that that right extends to a person not having to  
19 testify in court?

20 A. Yes, sir.

21 Q. And did you agree with me that that  
22 constitutional right extends to that person not having to  
23 talk to the police?

24 A. Yes, sir.

25 Q. And if the Court were to instruct you that that

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1 is the law in this State, would you be willing to follow  
2 that law?

3 A. Yes, sir.

4 Q. We talked about the spousal privilege in the  
5 State; is that correct?

6 A. Yes, sir.

7 Q. And we told you that basically the spouse is  
8 the one that has that right. And nobody, not the State,  
9 not us, can make her waive that right. Only she and she  
10 alone through her attorney can waive it if they want to.  
11 Do you understand that?

12 A. Yes, sir.

13 Q. And knowing that, would you hold it either  
14 against the State or against us if that spouse did not  
15 testify?

16 A. No, sir.

17 Q. We talked about statements that might be  
18 offered or introduced as evidence regarding the  
19 individual who's on trial, that they might have given  
20 what's called confessions or statements of accused. Do  
21 you remember that?

22 A. Yes, sir.

23 Q. And my question is whether you'd be willing to  
24 take into consideration all the circumstances surrounding  
25 the taking of that statement; for example, if maybe ten

1 police officers questioned him one right after the other,  
2 whether he asserted his right to remain silent and they  
3 still questioned him, whether or not they threatened his  
4 family, his father, his mother or himself, you know, with  
5 prosecution, with arrest if he didn't, you know, give  
6 them a statement.

7 Do you see how all those things might lead  
8 to that person not wanting -- not giving that statement  
9 voluntarily?

10 A. Uh-huh. Yes, sir.

11 Q. If the Court were to instruct you that if in  
12 your mind you believed that a statement was not taken  
13 voluntarily, for you not to consider it for any purpose  
14 whatsoever, that you would be willing to do that?

15 A. Yes, sir.

16 Q. Knowing this is a capital murder case, would  
17 you still be willing to do that?

18 A. Yes, sir.

19 Q. We talked about codefendant testimony, how if  
20 there's more than one accused person, the State might  
21 make a deal with one of them. Do you remember that?

22 A. Uh-huh.

23 Q. How that person would be expecting a life  
24 sentence or a sentence of 99 years. He might make a deal  
25 with the State for like maybe ten, 15, 20 years; and then

1 he would come to court and testify against the person  
2 who's on trial. Do you see how that could happen?

3 A. Yes, sir.

4 Q. My question to you, Mr. Escobedo, is whether  
5 you would be willing to keep an open mind in listening to  
6 that codefendant and decide whether or not he's telling  
7 the truth or not and look at that deal that he might  
8 have.

9 A. Yes, sir.

10 Q. You as a juror would have to sit and listen to  
11 the witnesses, judge their credibility, whether to  
12 believe them or not.

13 I talked to you about a doctor. Maybe  
14 some people, some jurors might think, "He's a doctor. He  
15 has a degree in medicine. I'm going to believe  
16 everything he says."

17 Some jurors might think, "This is a police  
18 officer. Because he wears a badge, he took an oath to  
19 uphold the law, I'm going to believe everything he has to  
20 say."

21 But keeping in mind that, you know, a  
22 doctor might have made a mistake, he might be trying to  
23 cover it up, or he might be erroneous in a conclusion  
24 that he might have made. Do you see where we're all  
25 human, we all make mistakes, and we might not be willing

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1 to come to court under oath and recognize those mistakes?  
2 Do you understand that?

3 A. Yes, sir.

4 Q. And same thing with the police officer. You  
5 see in here a police officer being arrested for crimes  
6 all the time. So these individuals are not angels.  
7 Would you agree with me?

8 A. Yes, sir.

9 Q. So would you be willing to keep an open mind,  
10 listen to their testimony, look at how it is that these  
11 police officers or doctors or experts are acting in  
12 court, and then make a decision as to whether or not to  
13 believe them?

14 A. Yes, sir.

15 Q. And do you have any relatives in law  
16 enforcement?

17 A. No, sir.

18 Q. And you have not been a victim of a crime  
19 before; is that correct?

20 A. No, I have not.

21 Q. And you haven't heard anything about this case?

22 A. No, sir.

23 Q. So have you formed an opinion as to the guilt  
24 or innocence of Mr. Gutierrez?

25 A. No, sir.



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1           Q.    I just wanted to cover about three things from  
2 your questionnaire, and then I should be finished. On  
3 page 13, question 47, it's asking you whether you knew  
4 anybody that had been to the penitentiary. And you  
5 stated that it was your brother-in-law; is that correct?

6           A.    My brother-in-law.

7           Q.    Would that affect you in any way in this case?

8           A.    No, sir.

9           Q.    On question 51, "Do you think crime is a  
10 problem?" And you stated, "Yes. Crime is becoming a  
11 normal day-to-day thing. Once that begins to occur, you  
12 know you have a problem."

13                   Do you think that because you're of that  
14 opinion, that would affect your decision-making in this  
15 case?

16          A.    No, sir.

17          Q.    Would you be willing to keep an open mind,  
18 listen to the facts, and make a decision just based on  
19 the evidence?

20          A.    Yes, sir.

21          Q.    And would that at all come into play?

22          A.    I don't think it would, no. No, sir.

23          Q.    Do you see how we need a definite answer,  
24 whether or not it would or would not?

25          A.    No, I don't -- it won't.

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1 Q. And you're absolutely sure of that?

2 A. I'm absolutely sure.

3 Q. And it's asking you on page 14, question 53,  
4 "Do you personally believe that criminal laws in the  
5 United States and the State of Texas relating to criminal  
6 defendants are too lenient?" And you answered, "Yes."

7 Do you see how a juror might be thinking,  
8 "Well, laws are too lenient. And because I think that,  
9 I'm going to go ahead and if I get on the jury, I'm going  
10 to impose the highest penalty that there is for the crime  
11 that I'm sitting as a juror on." Do you see where that  
12 could happen?

13 A. Yes, sir.

14 Q. If you were to be selected as a juror in this  
15 case, would you be willing to -- I mean, would you --  
16 because of your opinion, would you do that?

17 A. I could put it aside and act fair to  
18 Mr. Gutierrez. I think I can -- I would.

19 Q. You would? And you honestly feel that way?

20 A. Yes, sir.

21 Q. On page 15, question 63, "What are your  
22 feelings about the death penalty?" "I am for it. Why  
23 have somebody in prison for the rest of their lives  
24 living off our taxes for a crime that was not -- that was  
25 not to that extent."

1                   Do you see how because -- if you find  
2                   somebody guilty in a capital murder case, there's two  
3                   options based on your answers, a life sentence or the  
4                   death penalty. And do you see how this would lead me to  
5                   believe that if you get on this jury, because you think  
6                   that if a person gets a life sentence, they're wasting  
7                   our tax dollars? Do you see where --

8                   A.    Yes, sir.

9                   Q.    -- I could believe that because of your answer?

10                  A.    (Nods head).

11                  Q.    And if you were to be selected as a juror,  
12                  would you automatically want to answer those questions in  
13                  a way that would lead to the death penalty because of the  
14                  way you believe?

15                  A.    I would answer those questions in a fair way,  
16                  not taking my opinion, just going by the facts that have  
17                  been -- that have been shown to me and the evidence, and  
18                  put my opinion aside to make the right -- try to do the  
19                  right judgment on that.

20                  Q.    And you honestly feel that way?

21                  A.    Yes, sir.

22                  Q.    On page 16, "What is the best argument for the  
23                  death penalty?" "Do you want murderers on our streets?"  
24                  And we talked about parole, remember yesterday?

25                  A.    Yes, sir.

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1           Q.    Because in your mind you think that somebody  
2   that's convicted of murder might get on parole, you might  
3   again be thinking to those questions and make sure --  
4   answering them in a way that would be to the death  
5   penalty because you don't want, you know, a person that  
6   you've just convicted of murder to be out on the streets  
7   after -- even if they're paroled. Do you think that  
8   would affect you in any way?

9           A.    No, sir.

10          Q.    And you honestly feel that way?

11          A.    I honestly feel that way.

12          Q.    Do you see how it would be a hard thing to do  
13   to set that opinion aside because that's the way you  
14   believe?

15          A.    Yes.

16          Q.    And the question then becomes can you set it  
17   aside and then just follow the law?

18          A.    Yes, sir.

19          Q.    And you honestly feel that you can do that?

20          A.    I honestly feel that way.

21          Q.    The last question on page 21, question 81, "Do  
22   you want to be a juror in this case?" "Yes." "Why or  
23   why not?" "I'm very interested in this case and to hear  
24   both sides of the story."

25                   I told you yesterday that we are not

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1 required by law to present any evidence. We can just sit  
2 here, do absolutely nothing. We don't have to ask  
3 questions of any of the State's witnesses. We don't have  
4 to present any of our own witnesses. We don't have to  
5 introduce any documents, photographs. And Mr. Gutierrez  
6 does not have to testify. That's a right that we have.  
7 Do you understand that?

8 A. Yes, sir.

9 Q. What this leads me to believe is that you would  
10 want to hear from the State and then you would want to  
11 hear from us. Do you see where I'm coming from?

12 A. Yes, sir, I do.

13 Q. My question is whether -- knowing that the law  
14 doesn't require us to do anything, would you be able to  
15 set your opinion aside and follow the law?

16 A. Yes, sir.

17 Q. You honestly feel that way?

18 A. I honestly feel that way.

19 Q. Would you in the back of your mind be thinking,  
20 "Well, I wish I would have heard from him"?

21 A. Well, I wish is a word that I guess everybody  
22 would cross their mind, but I wouldn't hold it against  
23 him.

24 Q. Would it affect your verdict if you didn't hear  
25 from him?

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1           A.    No, sir.

2           Q.    Would it affect your verdict if we didn't  
3 present any evidence?

4           A.    No.

5           Q.    And you honestly feel that way?

6           A.    I honestly feel that way.

7           Q.    Would you make a decision just based on what's  
8 presented to you and nothing else?

9           A.    Yes, sir.

10                   MR. REYES:  I have nothing further, Your  
11 Honor.

12                   THE COURT:  All right, Mr. Escobedo.  I'm  
13 going to ask you to step down for a few minutes; and I  
14 need to consult with the lawyers on a legal matter.

15                   **(Prospective juror left the courtroom)**

16                   THE COURT:  Is this venireperson  
17 acceptable to the State?

18                   MS. FISCHER:  Yes, Your Honor, he is.

19                   THE COURT:  Is he acceptable to the  
20 defendant?

21                   MR. REYES:  We don't have a challenge for  
22 cause, Your Honor, but we do exercise a peremptory  
23 strike.

24                   THE COURT:  That would be number five.

25                   MR. REYES:  That's correct.

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1 THE COURT: Bring him in.

2 THE BAILIFF: Yes, sir.

3 THE COURT: Mr. Escobedo, that's all the  
4 questions we have for you. We appreciate you coming by.

5 MR. ESCOBEDO: Thank you.

6 THE COURT: Thank you very much. You're  
7 excused to go.

8 MR. ESCOBEDO: Thank you.

9 THE COURT: See if Monica Rivera is here.

10 THE BAILIFF: No answer, Your Honor.

11 THE COURT: Okay. We'll wait until she  
12 gets here.

13 (Recess from 10:19 a.m. to 11:13 a.m.)

14 THE COURT: Okay. You may be seated.  
15 Bring in Ms. Rivera.

16 THE BAILIFF: Yes, Your Honor.

17 THE COURT: Good morning, Ms. Rivera.

18 MS. RIVERA: Hi.

19 THE COURT: First of all, let me apologize  
20 for bringing you back, but we need to put some other  
21 things on the record.

22 MS. RIVERA: It's no problem.

23 THE COURT: Thank you. We appreciate it.  
24 You may proceed.

25 MR. BLAYLOCK: Thank you, Judge.

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1                                   **MONICA RIVERA,**  
2           having been called as a prospective juror and, upon  
3           her oath, was examined and testified as follows:

4                                   **VOIR DIRE EXAMINATION**

5   **BY MR. BLAYLOCK:**

6           Q.    Good morning, Ms. Rivera.

7           A.    Good morning again.

8           Q.    Remember we talked quite a bit yesterday?

9           A.    I'm sorry?

10          Q.    Remember yesterday we talked --

11          A.    Yes.

12          Q.    -- quite a bit?

13          A.    Uh-huh.

14          Q.    I just want to ask you a few more questions.

15          A.    Sure.

16          Q.    First of all, just let me ask you, all the  
17 things that you said yesterday, if I ask you all the same  
18 questions, would you answer them all the same way today?

19          A.    I believe so.

20          Q.    Okay. Good. You live at -- what's your  
21 address?

22          A.    15 Moore Avenue.

23          Q.    Okay. Do you know the Cook family that lives  
24 over there?

25          A.    No.



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1 Q. Did you have a murder in your neighborhood not  
2 too long ago, in 1998?

3 A. Yes, we did.

4 Q. Okay. Do you know anything about that?

5 A. Not really.

6 Q. Did that scare you or make you feel one way or  
7 the other?

8 A. No. Uh-uh.

9 Q. Good. Did you know anything about that case?

10 A. No.

11 Q. Okay. Did you know the -- did you know John  
12 Paul Garza?

13 A. No.

14 Q. And you didn't -- you said you didn't know the  
15 Cook family or Glen Cook?

16 A. Uh-uh. No.

17 Q. Were you living there when that took place?

18 A. I lived across the street when that took place,  
19 but what I heard was just a murder. That's all.

20 Q. Okay. Do you know the outcome of that trial at  
21 all?

22 A. No, sir.

23 Q. You don't see John Paul Garza around that  
24 neighborhood anymore, do you?

25 A. No, sir.

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1 Q. Okay. Let me just go right into your  
2 questionnaire one more time.

3 A. Sure.

4 Q. And we talked a little bit about this  
5 yesterday. We talked about the burden of proof, right?

6 A. Yes.

7 Q. And you know we got that burden of proof, okay?  
8 It's beyond a reasonable doubt, right?

9 A. Yes.

10 Q. Do you remember?

11 A. Yes.

12 Q. Do you remember what reasonable doubt is?

13 A. I remember, but I can't say.

14 Q. Based on your --

15 A. Explain it.

16 Q. -- reason and common sense --

17 A. Yes.

18 Q. -- the kind of thing to make you hesitate to  
19 act in the most important of your own affairs, right?

20 A. Uh-huh.

21 Q. Okay. And in your questionnaire you said you  
22 would want the State to prove it to you in this kind of  
23 case beyond all doubt. Do you remember saying that?

24 A. Yes.

25 Q. Do you still feel that way?

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1 A. Yes.

2 Q. Okay. So you would want the State to have a  
3 higher burden than normal?

4 A. Yes.

5 Q. And why is that?

6 A. To me, that is proof that the person did commit  
7 the crime. It's evidence towards me that he should be  
8 punished or --

9 Q. Okay. Well, let's say that you listened as a  
10 juror to all the evidence and you thought -- I mean, your  
11 reason said, "Yeah, I think he did it. I think he did  
12 it. My reason tells me he did it, but they didn't prove  
13 it beyond all doubt because I have a few doubts in my  
14 mind."

15 Let's say I have a doubt about, you know,  
16 the State said that he was wearing a yellow shirt; and  
17 the witness said that he thought it was orange. So I've  
18 got a doubt about what color his shirt was.

19 I mean, would you say the State didn't  
20 prove it beyond all doubt because I don't know everything  
21 about this case? I have a doubt. That's a doubt, right?  
22 You would admit that's a doubt?

23 A. Yes.

24 Q. Okay. So would you want the State to prove it  
25 beyond all doubt?

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1 A. Yes.

2 Q. Okay. So if one of the witnesses said he had a  
3 yellow shirt and another witness said he had an orange  
4 shirt, and you as a juror sitting there, you don't know  
5 what color of shirt, you would say, "Not guilty because  
6 I've got a doubt about what color his shirt was"?

7 A. Well, they don't know for sure what color the  
8 shirt was. So I would say not guilty right there.

9 Q. Okay. So you would want the State to prove  
10 every detail --

11 A. Yes.

12 Q. -- beyond all doubt?

13 A. Yes.

14 Q. And you understand that is a higher burden,  
15 that you're holding the State to a higher burden?

16 A. Yes.

17 Q. And tell me again a little bit more why you  
18 would want a higher burden in this kind of case.

19 A. It's a man's life that you're going to put away  
20 in jail forever or death. You should really consider the  
21 factor --

22 Q. Okay.

23 A. -- before you decide.

24 Q. Well, is there any way I could talk you out of  
25 that and say -- you know, the law says beyond a

1 reasonable doubt, based on your reason and your common  
2 sense. And you're saying, "No. In this kind of case  
3 it's got to be all doubt, all or nothing."

4 A. I need evidence, I mean, like proof, I mean,  
5 real factors for a sure answer.

6 Q. Beyond all doubt?

7 A. Beyond all doubt.

8 Q. All right. That's all the questions I have.

9 MR. GALARZA: May I proceed, Your Honor?

10 THE COURT: You may.

11 VOIR DIRE EXAMINATION

12 BY MR. GALARZA:

13 Q. Monica, we introduced ourselves yesterday and  
14 also last Tuesday; is that correct? My name is Santiago  
15 Galarza. This is Daniel Reyes.

16 A. Hi.

17 Q. We both represent Mr. Gutierrez. First of all,  
18 thank you for being back over here again. We apologize  
19 if this is any inconvenience to you.

20 A. No.

21 Q. Okay. Let me first go into the -- what you  
22 were talking about right here. You understand that a  
23 person can be charged for a ticket for speeding --

24 A. Yes.

25 Q. -- for D.W.I. and also for murder and capital

1 murder. You understand that?

2 A. Yes.

3 Q. Okay. If the Court were to tell you that the  
4 proof that you need or the proof that they need to go  
5 ahead and show you is beyond a reasonable doubt for the  
6 ticket and for all the other cases, would you be willing  
7 to follow that?

8 A. Yes.

9 Q. Okay. Like an example, if they were to tell  
10 you that in a capital murder case, the proof that they  
11 need to go ahead and show you is beyond a reasonable  
12 doubt, okay, not beyond all doubt, okay?

13 A. Okay.

14 Q. Remember I went through the elements yesterday  
15 to you?

16 A. Yes, sir.

17 Q. And I went ahead and showed you that there's  
18 six elements that the State needs to prove beyond a  
19 reasonable doubt.

20 A. Yes.

21 Q. Okay. And that's all that they need to go  
22 ahead and prove to you.

23 A. (Nods head).

24 Q. Do you agree with me?

25 A. Yes.

1           Q.    Okay.  If the State -- if the Court tells you  
2 this is all that they need to prove beyond a reasonable  
3 doubt, are you willing to follow this?

4           A.    Yes.

5           Q.    Okay.  Like an example, they need to go ahead  
6 and prove all the elements; one, the defendant; on or  
7 about the 5th day of September, 1998; in Cameron County  
8 Texas; number four is intentionally; number five is he  
9 caused the death of an individual by stabbing that  
10 individual with a screwdriver or object unknown to the  
11 grand jury; and number five -- I'm sorry, still number  
12 five, by striking that individual with an object unknown  
13 to the grand jury, or by causing that individual to  
14 impact with an object unknown to the grand jury; and then  
15 number six, and the said defendant was then and there in  
16 the course of committing or attempting to commit the  
17 offense of robbery of the individual.

18                       Do you understand that -- you remember I  
19 told you about the lottery?

20          A.    Yes.  Uh-huh.

21          Q.    In order for you to win the lottery, you have  
22 to get all six numbers; is that correct?

23          A.    Yes.

24          Q.    Well, it's the same thing here.  In order for  
25 you to find the accused guilty of an offense, you need to

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1 find that the State proved all six elements beyond a  
2 reasonable doubt.

3 A. Yes.

4 Q. Okay? If the Court would tell you that what  
5 needs to be proven by the State is beyond a reasonable  
6 doubt, would you be willing to follow that?

7 A. Just one or --

8 Q. Either -- well, they need to prove all six  
9 elements beyond a reasonable doubt.

10 A. Yes, I would be willing to follow that.

11 Q. Okay. You stated earlier that you would  
12 require proof of beyond all doubt.

13 A. Yes.

14 Q. Okay. Because this is a more serious offense.

15 A. Yes.

16 Q. Okay. If this Court would tell you that the  
17 only proof they need to show you is beyond a reasonable  
18 doubt, would you be willing to set aside that requirement  
19 that you have of beyond all doubt and just follow what  
20 the Court tells you?

21 A. Yes.

22 Q. Okay. Like an example, if they were to prove  
23 that the defendant, this is the person that committed  
24 this offense, okay, they proved it beyond a reasonable  
25 doubt, would you agree with me that on there it doesn't



1 say anything as to --

2 A. Excuse me?

3 Q. Would you agree with me that on there it  
4 doesn't say anything that he needs to have a yellow or a  
5 red shirt? It doesn't require that.

6 A. No, it doesn't.

7 Q. Okay. The only thing you need to know is  
8 whether it was this defendant that caused this death,  
9 whether it was this person.

10 A. Yes.

11 Q. Okay.

12 A. But -- yes. Uh-huh.

13 Q. Again, let me go back. Would you be willing to  
14 set aside the requirement that you have of beyond all  
15 doubt if the Court were to tell you that the only thing  
16 that the State needs to prove is beyond a reasonable  
17 doubt? Would you follow what the Court tells you?

18 A. Yes, what the Court tells me.

19 Q. Let me just go through the information. I'm  
20 just going to be asking you some questions. You stated,  
21 I believe, that you don't know any of the parties in this  
22 case; is that correct?

23 A. Correct.

24 Q. And you don't know any of the witnesses?

25 A. No.

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1           Q.    Okay. Including the names that we gave you  
2 yesterday?

3           A.    Yes.

4           Q.    Okay. If one of the witnesses or somebody that  
5 would come testify later on, if it happens that you know  
6 him because he's a friend or acquaintance, would that  
7 affect you in any way?

8           A.    No, sir.

9           Q.    Okay. Would you automatically -- would you  
10 agree with me to be fair and impartial in this case?

11          A.    Yes.

12          Q.    Okay. You would not automatically just believe  
13 what he's saying just because you know him?

14          A.    No.

15          Q.    We spoke to you about an indictment. Do you  
16 remember that?

17          A.    Yes.

18          Q.    Okay. That that's not proof that the person  
19 that's here is automatically guilty.

20          A.    Yes.

21          Q.    Okay. I believe you also stated in your jury  
22 questionnaire, and I'll quote you, "That a person is  
23 innocent until proven guilty."

24          A.    Yes.

25          Q.    Okay. So what that means is that you would

1 wait until all the evidence is presented and thereafter,  
2 once you go deliberate, find a person guilty or not  
3 guilty depending on what the witnesses state; is that  
4 correct?

5 A. Yes. Uh-huh.

6 Q. And you would be willing to follow this beyond  
7 a reasonable doubt?

8 A. Yes.

9 Q. Okay. Remember I spoke to you that beyond a  
10 reasonable doubt is -- a reasonable doubt is a doubt  
11 based on reason and common sense after a careful and  
12 impartial consideration of all the evidence in the case.  
13 Do you remember that?

14 A. Yes.

15 Q. And it is the kind of doubt that would make a  
16 reasonable person to hesitate to act in the most  
17 important of his own affairs.

18 A. Yes.

19 Q. In this case what we're talking about was about  
20 you using your common sense.

21 A. Yes.

22 Q. Okay. It also states, "A reasonable doubt  
23 therefore must be proof of such a convincing character  
24 that you would be willing to rely and act upon it without  
25 hesitation in the most important of your own affairs."

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1 A. Correct.

2 Q. Are you willing to follow this procedure --

3 A. Yes.

4 Q. -- to require the State to prove it beyond a  
5 reasonable doubt?

6 A. Yes.

7 Q. Okay. You're willing to set aside your way of  
8 thinking that you need all doubt?

9 A. Yes.

10 Q. Okay. And just follow beyond a reasonable  
11 doubt?

12 A. Yes.

13 Q. Okay. I gave you the example of purchasing a  
14 home.

15 A. I'm sorry?

16 Q. The purchasing of a home, I gave you that  
17 example.

18 A. Oh, yes. Uh-huh.

19 Q. That if you would go purchase a home, if the  
20 price was too high and if there was a lot of damage to  
21 the house, would you purchase the home?

22 A. No, I wouldn't.

23 Q. Okay. Because you would use your common sense  
24 and you would automatically agree with me that probably  
25 the house would not be worth it; is that correct?

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1 A. Correct.

2 Q. Okay. I went through the elements with you a  
3 little while ago; and like I told you, that the State  
4 needs to prove every single element beyond a reasonable  
5 doubt; is that correct?

6 A. Correct.

7 Q. Okay. Like in element number six, I went  
8 through what robbery is and what burglary of habitation  
9 is. Do you remember that?

10 A. Yes.

11 Q. Robbery is a crime that's committed against a  
12 person.

13 A. Yes.

14 Q. Would you agree with me?

15 A. Yes.

16 Q. Okay. Burglary is when it's committed against  
17 a habitation, a residence or against a building.

18 A. Yes.

19 Q. Okay. So there are two different types of  
20 felonies. You would agree with me?

21 A. Yes.

22 Q. Okay. If the State didn't prove element number  
23 six, that they proved that the person committed burglary,  
24 and what it says on there is that they need to commit or  
25 they were going to commit robbery, what would your

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1 verdict be at that time?

2 A. Innocent. They need to prove more.

3 Q. Okay. Which would be not guilty; is that  
4 correct?

5 A. Correct.

6 Q. Because on there it says robbery and they  
7 proved burglary; is that correct?

8 A. Yes.

9 Q. So at that point you would return a verdict of  
10 not guilty; is that correct?

11 A. Yes, because they need one more element.

12 Q. Okay. We spoke to you about what we call the  
13 bifurcated trial. And what that is is a two-part trial.  
14 Do you remember that?

15 A. Yes.

16 Q. Okay. What it is is the very first part is  
17 when we go through the guilt/innocence, whether a person  
18 is going to be found guilty or not guilty.

19 Okay. We present all the evidence to you,  
20 which includes statements, pictures, or anything else  
21 that's presented to you. And thereafter, the jury goes  
22 back there and you all come back with a guilty or not  
23 guilty.

24 A. (Nods head).

25 Q. If you all come back with not guilty, remember

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1 I told you that that one, it stops right there.

2 A. Yes.

3 Q. Okay. You're willing to follow that?

4 A. Yes.

5 Q. Okay. If you return a verdict of guilty, then  
6 at that point if you return a verdict of capital --  
7 guilty of capital murder, then we go through the three  
8 questions.

9 A. Yes.

10 Q. Okay. Are you willing to follow those three  
11 questions?

12 A. Yes.

13 Q. Okay. If you return a verdict of a lesser  
14 included offense, which is something less than capital  
15 murder, then at that point -- like an example, if you did  
16 not find him guilty of capital murder, you found him  
17 guilty of murder, then that would have a sentencing range  
18 of five to 99 or life, okay? You're willing to follow  
19 that?

20 A. Yes.

21 Q. Okay. If you found him guilty of not capital  
22 murder and not murder, you found him guilty of robbery,  
23 that has a sentencing range of two to 20. You're willing  
24 to follow that, to give him either two to 20 or anything  
25 in between?

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1 A. Yes.

2 Q. Okay. If you find him guilty of capital  
3 murder, we would go into the three issues which the very  
4 first issue is what they told -- what we spoke to you,  
5 that you have to look into the future; is that correct?

6 A. Yes.

7 Q. Okay. And at that point determine whether he's  
8 going to commit or you believe he'll commit criminal acts  
9 of violence.

10 A. Yes.

11 Q. Okay. And Question Number 2 is where we  
12 actually spoke to you about whether -- from the evidence  
13 beyond a reasonable doubt, the defendant actually caused  
14 the death of the individual, he intended to kill the  
15 individual, or he anticipated that the individual would  
16 be --

17 A. Yes.

18 Q. -- would -- he anticipated that a human life  
19 would be taken, okay? We gave you the Circle K example  
20 at that point, okay?

21 A. (Nods head).

22 Q. You need to answer in words.

23 A. Yes.

24 Q. Okay. The very first example we gave you was  
25 the Circle K example where we both -- Mr. Reyes and I



1 both go in to Circle K with a gun. At that point we both  
2 agree that if somebody's going to give us a hard time,  
3 we're going to kill whoever gives us a hard time.

4 A. Yes.

5 Q. Okay. So in Question Number 2, if I actually  
6 kill the clerk because she's giving me a hard time, your  
7 response to the very first part would be "yes" because I  
8 actually caused the death; is that correct?

9 A. Yell.

10 Q. Okay. Your response to question number two as  
11 to Mr. Reyes would be "yes" because he actually intended.  
12 We both agreed that if somebody would give us a hard  
13 time, we would kill the clerk, we would kill that  
14 individual.

15 A. Yes.

16 Q. Okay. Your response to question number three  
17 would be "yes" because we both anticipated that maybe  
18 somebody would be killed.

19 A. Yes.

20 Q. Okay. Let me change the hypothetical a little  
21 bit. If we both go in to steal some cigarettes, he is  
22 unaware that I have a gun. We never speak about it or we  
23 never talk about killing anybody, okay? We both go in.  
24 We both take the cigarettes.

25 Mr. Reyes gets out first. Then I get out.

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1 As soon as I get out, I get the gun out and I kill the  
2 clerk. Mr. Reyes is unaware that I have a gun. He's  
3 unaware -- we never spoke about killing somebody, okay?  
4 The only thing we spoke about was going in and committing  
5 robbery, okay?

6 A. (Nods head).

7 Q. Your response as to question number one would  
8 be -- did I actually cause the death of the individual?

9 A. Yes.

10 Q. Okay. Did Mr. Reyes actually cause the death  
11 of the individual?

12 A. You were both involved.

13 Q. Okay.

14 A. So --

15 Q. But in this hypothetical, we both just went in  
16 to steal some cigarettes. He didn't know that I had a  
17 gun. We never spoke about killing somebody. We just  
18 went in just to commit -- just to take some cigarettes.

19 A. I would have to say yes.

20 Q. Okay. Did he actually cause the -- I was the  
21 one that pulled the trigger.

22 A. Yes.

23 Q. I was the one that actually got the gun and  
24 shot the clerk.

25 A. Uh-huh.

1 Q. Okay. I was the one. He did not know that I  
2 had a gun, okay? We had not talked about killing  
3 somebody, okay? I got the gun and I killed the clerk  
4 once we got out without him knowing until we were already  
5 outside. I actually killed the clerk; is that correct?  
6 I actually caused the death of the clerk.

7 A. Yes.

8 Q. Did he actually cause the death of the clerk?  
9 Did he actually kill the clerk?

10 A. No. You did, but --

11 Q. Okay. Let me go on to question number two.  
12 Did we ever speak about killing somebody?

13 A. No.

14 Q. So I had a gun. So my intention was that  
15 probably somebody might be killed because I knew I had a  
16 gun.

17 A. (Nods head).

18 Q. Okay. He did not know that I had a gun. We  
19 never spoke about killing anybody. The only thing we  
20 spoke about is going in and taking some cigarettes, okay?  
21 Did he intend to kill somebody when we went in there?

22 A. No.

23 Q. Okay. Did he anticipate that somebody would be  
24 killed? He did not know that I had a gun. He did not --  
25 we never spoke about killing somebody.

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1 A. No.

2 Q. But I did; is that correct?

3 A. Yes.

4 Q. I anticipated because I had a gun.

5 A. Yes.

6 Q. Okay. I intended to kill somebody if I had a  
7 gun with me.

8 A. Yes.

9 Q. We spoke to you that in order for you to have a  
10 "yes" answer, all 12 of you jurors have to agree to a  
11 "yes" answer; is that correct?

12 A. Correct.

13 Q. And that's the procedure for Question Number 1  
14 and that's the procedure for Question Number 2, okay? In  
15 order for you all to return a "no" answer, only ten of  
16 you have to agree. Do you remember that?

17 A. Yes.

18 Q. Okay. And if ten of you say "no" and two of  
19 you say "yes," you can still come back with a "no"  
20 answer.

21 A. Yes.

22 Q. Okay. So you're willing to follow that?

23 A. Yes.

24 Q. Okay. Then if we return a "no" answer to  
25 Question Number 1, then it stops there. Do you remember

1 that?

2 A. Yes.

3 Q. If you return a "no" answer to Question  
4 Number 2, it stops there.

5 A. Yes.

6 Q. Okay. But if you return a "yes" answer to  
7 Special Issue Number 1, then you go to Special Issue  
8 Number 2.

9 A. Uh-huh.

10 Q. Okay. If you return a "yes" answer to Special  
11 Issue Number 2, then you go to Special Issue Number 3,  
12 okay? In that special issue, remember that we spoke to  
13 you as to what you're trying to look at is whether this  
14 person deserves life imprisonment rather than the death.  
15 Do you remember that?

16 A. Yes.

17 Q. Okay. Do you remember that we told you that in  
18 this situation, you would look at the evidence, okay,  
19 everything that was presented to you, how it happened.

20 A. Yes.

21 Q. Okay. You would look at the circumstances of  
22 the offense. Remember that?

23 A. Yes.

24 Q. Okay. You would look at the defendant's  
25 character and background.

1 A. Yes.

2 Q. Like an example, education, how much -- and you  
3 would also look at the personal moral culpability of the  
4 defendant.

5 A. Yes.

6 Q. Are you willing to follow this?

7 A. Yes.

8 Q. We spoke to you that what this issue talks  
9 about is the mitigating -- this is the mitigating issue;  
10 is that correct?

11 A. Yes.

12 Q. Okay. Which means that -- mitigating evidence  
13 means evidence that a juror might regard as reducing the  
14 defendant's moral blameworthiness, okay? How culpable is  
15 this defendant, this person in this case?

16 A. Uh-huh.

17 Q. Is he less culpable and does he deserve life  
18 instead of death? That's what you're looking for in this  
19 issue.

20 A. Yes.

21 Q. Okay. You're willing to follow that?

22 A. Yes.

23 Q. And you understand it?

24 A. Yes.

25 Q. We spoke to you about that a person has the

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1 right to remain silent.

2 A. Yes.

3 Q. Okay. And you understand that they don't have  
4 to speak to a police officer.

5 A. Uh-huh. Yes.

6 Q. They don't have to speak or testify here in  
7 court.

8 A. Yes.

9 Q. And they don't have to go ahead and present any  
10 evidence at all.

11 A. Yes.

12 Q. Okay. If we would sit here and if the  
13 individual did not testify in court, would you hold it  
14 against him?

15 A. No.

16 Q. Okay. If we would sit here and not present any  
17 evidence at all, we would not question any other  
18 witnesses and we don't present any witnesses, would you  
19 hold it against the accused if the law states that they  
20 don't have to present any evidence?

21 A. No.

22 Q. Okay. Would you automatically -- if the State  
23 did not prove their case beyond a reasonable doubt and if  
24 we didn't present any evidence -- remember, going back to  
25 the elements? If they proved burglary instead of robbery

1 in element number six, okay, and we did not present any  
2 evidence at all, what would your verdict be at that time?

3 A. If they proved it and they proved all six  
4 elements?

5 Q. If they didn't prove element number six. You  
6 remember they proved burglary and --

7 A. Innocent, because they didn't prove element  
8 number six.

9 Q. All right. So what would your verdict be at  
10 that time?

11 A. Innocent, because they need to follow -- well,  
12 complete all six elements.

13 Q. Okay. So it would be not guilty at that time;  
14 is that correct?

15 A. Correct.

16 Q. All right. And that would be even if we don't  
17 present any evidence at all?

18 A. Sure. Yes.

19 Q. Okay. Because the State is the one that has to  
20 prove all six elements beyond a reasonable doubt.

21 A. Yes.

22 Q. Okay. You agree with me on that?

23 A. Yes.

24 Q. And you're willing to follow that?

25 A. Yes.



1           Q.    Okay.  We spoke to you about the spousal  
2 privilege, that the wife has the right not to testify at  
3 all.

4           A.    Yes.

5           Q.    Okay.  And if she does not testify, would you  
6 hold it against the accused?

7           A.    No.  It's her choice.

8           Q.    Okay.  And we also spoke to you about the  
9 codefendant's right not to testify.

10          A.    Yes.

11          Q.    Okay.  Would you hold that against the accused?

12          A.    No.

13          Q.    Okay.  You agree with me that in some  
14 situations there's plea bargaining with codefendants?

15          A.    Yes.

16          Q.    Do you remember what plea bargaining is?

17          A.    Yes.

18          Q.    Okay.  Plea bargain is when a codefendant --  
19 which in our hypothetical, if I was the one in trial,  
20 Mr. Reyes was the codefendant, okay?  If he got a plea  
21 bargain, which means if he got a lesser sentence or he  
22 got probation or he got a dismissal just because he's  
23 going to testify in a case -- do you understand what a  
24 plea bargain is?

25          A.    Yes.

1 Q. He's getting something in return for his  
2 testimony, okay? Would you agree with me that he has a  
3 motive for testifying?

4 A. Yes.

5 Q. He's getting something in return. He's getting  
6 a plea bargain. He's getting probation or he's getting a  
7 dismissal. So he has a motive to testify.

8 A. Yes.

9 Q. Okay. And would you agree with me that people  
10 might lie in order for them to get something in return?

11 A. Yes.

12 Q. Okay. So would you take this into  
13 consideration?

14 A. Very much.

15 Q. Okay. We spoke to you about the doctors and  
16 police officers and scientists. They're also human; is  
17 that correct?

18 A. Yes.

19 Q. Okay. That this individual is -- just like all  
20 of us, also make mistakes?

21 A. Yes.

22 Q. All right. So maybe sometimes they might lie  
23 in order to cover their mistake.

24 A. Yes.

25 Q. Would you agree with me as to that?

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1 A. Yes.

2 Q. Would you be willing to take that into  
3 consideration?

4 A. Yes.

5 Q. You stated, I believe, you have your dad that's  
6 a police officer; is that correct?

7 A. Yes.

8 Q. And I believe you have a cousin or an uncle  
9 that's a jailer?

10 A. An uncle.

11 Q. Okay. And he works at the detention center you  
12 said?

13 A. Yes.

14 Q. Okay. Would you be willing to be fair and  
15 impartial even though you have these family members that  
16 are --

17 A. Yes.

18 Q. Okay. Would you make a decision automatically  
19 or believe police officers a lot more just because you  
20 have family that's in law enforcement?

21 A. No. I'll be fair.

22 Q. Okay. So you would be willing to listen to the  
23 testimony --

24 A. Yes.

25 Q. -- and decide after that?

1                   You stated that you've never been a prior  
2 victim; is that correct?

3           A.    That's correct.

4           Q.    You stated that you've kind of heard about the  
5 case, but that you've blocked it out?

6           A.    Yes.  It's like the title, the name of it, but  
7 that's it.  I just blocked it out.

8           Q.    Okay.  So you haven't formed an opinion as to  
9 this?

10          A.    No.

11          Q.    Okay.  You've never served as a juror before?

12          A.    No, sir.

13          Q.    Thank you.

14                   MR. GALARZA:  That's all I have at this  
15 time, Your Honor.

16                   THE COURT:  All right, Ms. Rivera.  I'm  
17 going to ask you to step down for just a minute, and I'll  
18 take up a legal matter.

19                   **(Prospective juror left the courtroom)**

20                   THE COURT:  Is this venireperson  
21 acceptable to the State?

22                   MR. BLAYLOCK:  No, Judge.  We challenge  
23 for cause.  She clearly said she would hold the State to  
24 a higher burden, including the hypothetical about the  
25 yellow shirt and the orange shirt.

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1 THE COURT: I'll deny that.

2 MR. BLAYLOCK: I would object for the  
3 record. I would ask that at the end, if I come in need  
4 of another peremptory challenge because I'm going to have  
5 to use one now, that I be given one.

6 THE COURT: That'll be denied.

7 MR. BLAYLOCK: Peremptory challenge.

8 THE COURT: That'll be number --

9 MR. BLAYLOCK: Six.

10 THE COURT: -- six.

11 Bring her in.

12 THE BAILIFF: Yes, Your Honor.

13 THE COURT: Ms. Rivera, that's all the  
14 questions we have for you. You're excused to go. Thank  
15 you.

16 MS. RIVERA: Thanks.

17 THE COURT: Okay. We'll resume at 1:30  
18 with Ms. Barrera.

19 (Lunch recess taken from 11:39 a.m. to  
20 1:24 p.m.)

21 THE COURT: All right. You may be seated.  
22 Bring Ms. Barrera in.

23 THE BAILIFF: Yes, Your Honor.

24 THE COURT: Good afternoon, Ms. Barrera.

25 MS. LOPEZ: Good afternoon.

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1 THE COURT: How are you?

2 MS. LOPEZ: Okay.

3 THE COURT: First of all, let me apologize  
4 for bringing you back. There's some other things that we  
5 need to put on the record; and that's the only reason we  
6 brought you back.

7 MS. LOPEZ: Okay.

8 THE COURT: So I appreciate your coming  
9 back for us.

10 Go ahead.

11 MS. FISCHER: Thank you, Judge.

12 **AMERICA BARRERA LOPEZ,**

13 having been called as a prospective juror and, upon  
14 her oath, was examined and testified as follows:

15 **VOIR DIRE EXAMINATION**

16 **BY MS. FISCHER:**

17 Q. Good afternoon, ma'am. How are you?

18 A. Okay.

19 Q. I'm Karen Fischer. You remember me from  
20 yesterday. Mr. Blaylock will be here in a minute.

21 When we spoke yesterday, you had told me  
22 and you told the Judge that because of what happened to  
23 your sister and the way that she was murdered, that it  
24 would be impossible for you to be a juror in this case  
25 because that would always be in the back of your mind.

1 Is that still your feeling here today?

2 A. Yes.

3 Q. And I know that you had told us through your  
4 questionnaire that you were somewhat familiar with the  
5 facts of this case; is that right?

6 A. No.

7 Q. Okay. You don't know anything about the facts  
8 of this case?

9 A. No.

10 Q. But hypothetically, if this case was similar to  
11 the way that your sister died, would that cause your  
12 verdict maybe in this case to change?

13 A. I don't understand.

14 Q. Okay. Kind of like we talked about yesterday,  
15 sometimes we have a feeling in our hearts --

16 A. Okay.

17 Q. -- that may influence what our final decision  
18 is. And kind of when you come into the jury and you're a  
19 juror, you have to think only with your head. And you  
20 may have some feelings in your heart that may cause you  
21 to not be fair.

22 A. Right.

23 Q. And that's what you told me yesterday. I just  
24 need to know if that's the same today. You've had some  
25 time. You slept on it. You went home. And I hate the

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1 fact that you probably did think about your sister --

2 A. Yes.

3 Q. -- last night; and I hate that for you. But is  
4 it still the same? Are you still going to be biased in  
5 this case because of what happened to her?

6 A. I wouldn't know. I wouldn't know.

7 Q. Okay. Now, yesterday you told me that you  
8 thought you would.

9 A. Yes.

10 Q. Okay? Have you changed your opinion --

11 A. No.

12 Q. -- or is it still the same?

13 A. It's the same.

14 Q. Okay. So because of what happened to her, you  
15 wouldn't be able to concentrate in this case?

16 A. Right.

17 Q. And you might hold it against the defendant  
18 maybe if the facts were similar to the way that your  
19 sister died; isn't that right?

20 A. Right.

21 MS. FISCHER: I don't have any further  
22 questions, Your Honor.

23 MR. REYES: May I proceed, Your Honor?

24 THE COURT: You may.

25



VOIR DIRE EXAMINATION

BY MR. REYES:

Q. Good morning -- good afternoon, Ms. Barrera.  
How are you doing?

A. Okay.

Q. Is it Barrera or is it Lopez?

A. Lopez.

Q. Okay. I'm just going to go ahead and ask you  
some other questions. If you don't understand something  
that I'm asking, just let me know and I'll rephrase it,  
okay?

A. Okay.

Q. The first thing that I wanted to cover was from  
your questionnaire some of the answers that you gave. On  
page 5, question 14, it asks you, "Do you have any health  
problems, sight, hearing, emotional, et cetera, which  
might affect your jury -- your service as a juror?" And  
you answered, "Yes." And basically you have problems  
with your blood pressure; is that correct?

A. Uh-huh.

Q. And --

THE COURT: You need to answer yes or no.

A. Yes.

THE COURT: Thank you.

Q. (BY MR. REYES) Everything that's being said

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1 needs to be taken down by the court reporter who is to  
2 your left. So you need to answer orally yes or no.

3 A. Okay.

4 Q. Okay. So the fact that you have high blood  
5 pressure, that would -- might interfere with your service  
6 as a juror?

7 A. Yes.

8 Q. And the fact that your sister was killed and by  
9 being here and hearing about this case, that's brought  
10 back those --

11 A. Yes.

12 Q. -- that case; isn't that correct?

13 A. Yes.

14 Q. So you understand that everybody is entitled to  
15 a fair trial?

16 A. Yes.

17 Q. And because if you as a juror might be sitting  
18 here and you might hold it against the person who's on  
19 trial because of something that might have happened to  
20 you or your family, you understand how that individual  
21 would not receive a fair trial?

22 A. Yes.

23 Q. Because you're making a decision based on  
24 emotion --

25 A. Yes.

1 Q. -- and not based on the facts or the evidence.

2 A. Yes.

3 Q. Do you understand that?

4 A. Yes.

5 Q. And it was my understanding from you yesterday  
6 that the fact that your sister was a victim of murder,  
7 that that would affect your decision-making in this  
8 case --

9 A. Yes.

10 Q. -- is that correct? And is that still the case  
11 today?

12 A. Yes.

13 Q. You also talked about -- you also talked on  
14 page 13, question 52, "Should people accused of murder be  
15 treated differently than people accused of committing  
16 other crimes?" And you answered, "Yes." And that  
17 would -- I would guess it would go back to your sister  
18 being killed, right?

19 A. Right.

20 Q. You had talked about her son being the one that  
21 killed her; is that correct?

22 A. Right. Yes.

23 Q. And because you said that he only got about  
24 five years and now he's out.

25 A. Yes.

1           Q.    Is that why you believe that people who are  
2 convicted of murder should get more of a sentence?

3           A.    Well, because he is still doing problems. He's  
4 still out there doing problems.

5           Q.    And because you have that personal experience  
6 in your family, do you think -- would that affect you  
7 also in this case because you can see that and then you  
8 can -- that might affect you as a juror? Do you see  
9 where I'm coming from?

10          A.    Yes.

11          Q.    Because yesterday you said, "Well, he's already  
12 out and he killed my sister."

13          A.    Yes.

14          Q.    And do you see how if you are to find somebody  
15 guilty, even you as a jury will be responsible for  
16 sentencing somebody?

17          A.    Yes.

18          Q.    And because you feel that way about your  
19 nephew, that that might affect you in this case. Do you  
20 see where that could happen?

21          A.    Yes.

22          Q.    And do you think you would have a hard time  
23 trying to set that feeling aside and making a fair  
24 decision or would it be difficult? Because all those  
25 things would be coming back about your sister.

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1 A. Yes.

2 Q. Do you see how that might happen?

3 A. Uh-huh. I don't think I could take it.

4 Q. You don't think you could take it?

5 A. No.

6 Q. And is there any way -- I know it's very  
7 difficult and we respect your -- you know, how it is that  
8 you're feeling. But is there any way that you would be  
9 able to set it aside or it would affect you? And if it  
10 affects you, that's fine. We need to know right now.

11 A. I think so.

12 Q. It would affect you? Do you understand that  
13 every person is presumed to be innocent of a crime? Do  
14 you understand that?

15 A. Uh-huh.

16 Q. And the presumption can only be overcome if the  
17 State presents enough evidence to convince a jury that  
18 that person is guilty beyond a reasonable doubt. Do you  
19 understand that?

20 A. Yes.

21 Q. Because with respect to that, on page 16,  
22 question 69 where it's asking you to, "Please state your  
23 personal belief regarding the following statement: A  
24 defendant is innocent until proven guilty beyond a  
25 reasonable doubt." And you didn't answer that.

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1 A. Uh-huh.

2 Q. Do you think that you would be affected  
3 somewhat? It goes, again, to your family --

4 A. Yes.

5 Q. -- and all that. That would affect you also?

6 A. Uh-huh. Yes.

7 Q. And question 21, page 80 is asking if are you  
8 familiar with the facts of this case; and you state that  
9 you are.

10 A. No, I'm not.

11 Q. You're not?

12 A. No.

13 Q. So that should have been a "no?"

14 A. That should have been a "no."

15 MR. REYES: I have nothing further, Your  
16 Honor.

17 THE COURT: All right.

18 MS. FISCHER: At this time the State would  
19 challenge this juror for cause based on her past history  
20 involving her sister's murder.

21 MR. REYES: We have no objection, Your  
22 Honor.

23 THE COURT: Okay. For the record I'll  
24 grant that.

25 Okay. Ms. Barrera, thank you very much

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1 for coming back. I appreciate you doing that.

2 MS. LOPEZ: Okay.

3 THE COURT: You're excused to go at this  
4 time.

5 MS. LOPEZ: Thank you.

6 THE COURT: Thank you. We'll be in recess  
7 until Ms. Lazo Peralez shows up.

8 THE BAILIFF: Let me go check, Your Honor.  
9 Maybe she's here.

10 THE COURT: All right.

11 THE BAILIFF: No, Your Honor, no answer.

12 THE COURT: We'll be in recess.

13 (Recess taken from 1:32 p.m. to 1:59 p.m.)

14 THE COURT: All right. You may be seated.  
15 Bring in Ms. Lazo Peralez.

16 THE BAILIFF: Yes, Your Honor.

17 THE COURT: Good afternoon, Ms. Lazo.

18 MS. PERALEZ: Hi. How are you doing?

19 THE COURT: How are you?

20 MS. PERALEZ: Okay.

21 THE COURT: First of all, let me apologize  
22 for bringing you back.

23 MS. PERALEZ: Okay.

24 THE COURT: We just need to put some other  
25 things on the record.

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1 MS. PERALEZ: Okay.

2 THE COURT: So you may be seated; and I  
3 think we're ready to proceed.

4 MS. PERALEZ: Okay.

5 THE COURT: We'll try to get you out  
6 quick.

7 MS. PERALEZ: Okay.

8 THE COURT: Go ahead.

9 MS. FISCHER: Thank you, Judge.

10 VELMA LAZO PERALEZ,  
11 having been called as a prospective juror and, upon  
12 her oath, was examined and testified as follows:

13 VOIR DIRE EXAMINATION

14 BY MS. FISCHER:

15 Q. Good afternoon, Ms. Peralez.

16 A. Good afternoon.

17 Q. My name is Karen Fischer. And Mr. Blaylock and  
18 myself, we both work for the Cameron County District  
19 Attorney's Office.

20 A. Okay.

21 Q. He spoke with you yesterday. I just want to  
22 ask a few more questions today; and then we're going to  
23 let the defendant's attorneys speak with you.

24 A. Okay.

25 Q. Now that you've had an opportunity to go home



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1 and think about things -- and I'm sure you probably did.  
2 Did you not think about some of the questions we had  
3 asked you yesterday?

4 A. Yes, I did.

5 Q. My question to you, then, is have any of your  
6 attitudes or your beliefs about the trial and the court  
7 system itself changed since yesterday?

8 A. No, it hasn't.

9 Q. Okay. What about your feelings about the death  
10 penalty? Have any of your -- any of the answers that you  
11 gave yesterday, are they changed today?

12 A. No, they haven't.

13 Q. Okay. So then once again, we were real clear  
14 yesterday, number one, you have to be fair and impartial;  
15 and you said you could do that.

16 A. Yes.

17 Q. And number two, when Mr. Blaylock talked to you  
18 about these questions here and he went over them very  
19 carefully with you, he told you based on your answer to  
20 these questions, the defendant may be subjected to the  
21 death penalty. You understood that?

22 A. Yes.

23 Q. And you told him that you would answer these  
24 questions honestly --

25 A. Correct.

1           Q.    -- and not make a decision that would ensure  
2 the defendant not getting the death penalty.

3           A.    Right.

4           Q.    Is that still your answers here today?

5           A.    Yes.

6           Q.    Okay. Is there anything else that we didn't  
7 ask you yesterday that you think might be important for  
8 us to know?

9           A.    Not that I can think of right now.

10          Q.    Okay. Anything that you're thinking that if  
11 you become a potential juror in the case or any  
12 questions -- this is the last time we get to talk which  
13 is why I'm asking you questions.

14          A.    Okay.

15          Q.    This should be the last time we get to talk to  
16 you --

17          A.    Okay.

18          Q.    -- Mr. Blaylock or myself, one-on-one. And I  
19 need to know if there's anything in your mind that makes  
20 you feel like you might not be fair. I mean, we talked  
21 to you real extensively yesterday; and you told us you  
22 could be fair and follow the law.

23          A.    Yes.

24          Q.    I need to make sure there's not something that  
25 you're thinking of right now that may cause you to not be

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1 fair.

2 A. No.

3 Q. Okay. So you're going to follow the law --

4 A. Yes.

5 Q. -- and answer the questions honestly?

6 A. Yes.

7 Q. Okay. And that's it.

8 MS. FISCHER: That's all I have, Judge.

9 MS. PERALEZ: Okay.

10 MR. GALARZA: May I proceed, Your Honor?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. GALARZA:

14 Q. It's Ms. Peralez, right?

15 A. Right.

16 Q. Okay. Good afternoon. Again, you remember Mr.  
17 Reyes and myself, Santiago Galarza.

18 A. Yes.

19 Q. Okay. I'm just going to be going over some of  
20 the questions that we already went through yesterday.  
21 And we just need to go ahead and ask you the questions  
22 again and we just need to go ahead and go through this  
23 procedure.

24 You stated that you didn't know any of the  
25 parties; is that correct?

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1 A. Correct.

2 Q. And you don't know any of the witnesses that  
3 were called?

4 A. Correct.

5 Q. Including the witnesses, the names that I gave  
6 you yesterday?

7 A. Correct.

8 Q. Okay. If it happens that some of those  
9 witnesses that you do know them and they're a friend of  
10 yours, you're willing to go ahead and just listen to the  
11 testimony and it wouldn't affect you in any way; is that  
12 correct?

13 A. Correct.

14 Q. Okay. You wouldn't automatically believe that  
15 they're more credible just because you know them?

16 A. No.

17 Q. Okay. We spoke to you about that person gets  
18 indicted after all the -- well, after the police makes an  
19 investigation, then after that all the paperwork is  
20 presented to the District Attorney's Office. And at that  
21 point a person is indicted; is that correct?

22 A. Correct.

23 Q. Would you agree with me that at that time a  
24 person is still presumed innocent?

25 A. Correct.

1 Q. Okay. Would you agree with me that at that  
2 point, that it's up to the State for them to prove their  
3 case beyond a reasonable doubt?

4 A. Correct.

5 Q. Okay. So at this point we're trying to select  
6 the jury. And at this point the person is still innocent  
7 until you listen to all the evidence.

8 A. Yes.

9 Q. And then if you all go over to the jury room  
10 and if at that time you believe that he's guilty, then  
11 you return a verdict of guilty.

12 A. Correct.

13 Q. Okay. If at that point you believe that they  
14 didn't prove one of the elements -- remember the elements  
15 we went over?

16 A. Yes.

17 Q. If they didn't prove one of the elements, then  
18 what would your verdict be at that time?

19 A. Not guilty.

20 Q. Okay. I went through element number six at  
21 that point.

22 A. Yes.

23 Q. Remember burglary and robbery?

24 A. Yes.

25 Q. If they proved burglary in element number six

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1     instead of robbery, which is what they have on there,  
2     what would your verdict be at that time?

3             A.     Not guilty.

4             Q.     We went through the definition of beyond a  
5     reasonable doubt. It's over here. And we stated that,  
6     "A reasonable doubt is a doubt based on reason and common  
7     sense after a careful and impartial consideration of all  
8     the evidence in the case. It is the kind of doubt that  
9     would make a person hesitate to act in the most important  
10    of his own affairs."

11                   Do you remember that -- when we spoke  
12    about the common sense?

13             A.     Correct.

14             Q.     That we try to go ahead and use our common  
15    sense in order to determine if they have proved their  
16    evidence beyond a reasonable doubt.

17             A.     Correct.

18             Q.     Remember that? Okay. "Reasonable doubt  
19    therefore must be proof of such a convincing character  
20    that you would be willing to rely and act upon it without  
21    hesitation in the most important of your owns affairs."

22                   We spoke of the purchase of a home.

23             A.     Yes.

24             Q.     Okay. That if the home was valued at 50,000  
25    and if they're selling it for 100,000, would you buy the

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1 home?

2 A. No.

3 Q. Why not?

4 A. Because it's not worth the 100,000.

5 Q. And again, if it was worth -- it was selling  
6 for 100,000 and this home once you saw it was damaged,  
7 would you purchase the home?

8 A. No.

9 Q. Why?

10 A. Because it's damaged.

11 Q. Okay. So at that point you're using your  
12 common sense --

13 A. Correct.

14 Q. -- to determine whether it's worth it to  
15 purchase this home or not --

16 A. Right.

17 Q. -- is that correct? Okay. That's the same  
18 common sense and reasoning that we want for you to use in  
19 this case.

20 A. Yes.

21 Q. Okay. You look at all the evidence. You look  
22 at all the elements. The six elements in this case are  
23 that the defendant; element number two would be that on  
24 or about the 5th day of September, 1998; number three  
25 would be that in Cameron County, Texas; number four that

1 intentionally; number five, caused the death of an  
2 individual by stabbing the individual with a screwdriver  
3 or object known to the grand jury, or by striking the  
4 individual with an object unknown to the grand jury, or  
5 by causing the individual to impact with an object  
6 unknown to the grand jury; and number six would be and  
7 the said defendant was then and there in the course of  
8 committing or attempting to commit the offense of robbery  
9 of the individual.

10 Do you remember these six elements?

11 A. Yes.

12 Q. And going back to what I told you a little  
13 while ago, you understand what's required in each  
14 element?

15 A. Yes.

16 Q. Okay. And you understand that the State needs  
17 to prove this beyond a reasonable doubt?

18 A. Yes.

19 Q. Okay. Going back to the hypothetical or the  
20 burglary and robbery, if they proved burglary in element  
21 number six, what would your verdict be at that time?

22 A. Not guilty.

23 Q. Okay. Because one of the elements was not  
24 proven --

25 A. Yes.



1 Q. -- is that correct?

2 A. Correct.

3 Q. So we go back to the lottery. If you buy a  
4 lottery on Wednesday, tomorrow, and you only get five  
5 numbers, do you get the lottery at that point?

6 A. No, I don't.

7 Q. Why not?

8 A. Because I need to get all six numbers --

9 Q. Okay.

10 A. -- to match.

11 Q. Okay. We also spoke to you about the  
12 bifurcated trial which is a two-part trial. Do you  
13 remember that?

14 A. Yes.

15 Q. Okay. That the very first part is the guilt or  
16 innocence, okay? You listen to the testimony. You  
17 listen to all the evidence. You see the pictures,  
18 anything that's introduced at the trial stage.

19 A. Okay.

20 Q. Okay. Once everything's introduced, once both  
21 sides rest, then at that point the jury, all 12 jurors  
22 will go to the back. They'll decide. They'll talk about  
23 this case and then at that point decide whether a person  
24 is guilty or not guilty. Do you remember that?

25 A. Yes.

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1 Q. Okay. At that point if you all decide he's not  
2 guilty, the case stops right there.

3 A. Uh-huh.

4 Q. Okay. You're willing to go through that  
5 procedure?

6 A. Yes.

7 Q. Okay. You're willing to go through the six  
8 elements. If they proved it beyond a reasonable doubt,  
9 it's guilty. If they fail to prove even one element,  
10 then it's not guilty at that point. Do you understand?

11 A. Yes.

12 Q. Okay. Then if you decide not guilty, it stops  
13 right there. If your decision at that point is guilty,  
14 then we go through -- if you all decide that he was  
15 guilty of capital murder, then you go through the three  
16 questions.

17 A. Okay.

18 Q. Is that -- remember that Question Number 1 --

19 A. Yes.

20 Q. -- if you all get a "yes" answer to that one --

21 A. Yes.

22 Q. -- you need 12 jurors to get a "yes" answer.

23 A. Yes.

24 Q. Okay. Then you go on to Question Number 2. Do  
25 you remember that?

1 A. Yes.

2 Q. Okay. If you get a "yes" answer to Question  
3 Number 2, then you go to Question Number 3, okay?

4 A. Yes.

5 Q. Remember that in Question Number 1, only ten of  
6 you need to say "no" in order for you all to bring back a  
7 "no" answer?

8 A. Yes.

9 Q. Okay. If you all bring back a "no" answer, it  
10 stops right there. Remember that?

11 A. Yes.

12 Q. Okay. But if you bring a "yes" answer, you go  
13 to Question Number 2. At that point, if you bring back a  
14 "no" answer, you only need ten people. Do you remember  
15 that?

16 A. Yes.

17 Q. Okay. If you bring a "no" answer, then it  
18 stops right there again.

19 A. Okay.

20 Q. Okay. If you bring a "yes" answer, you need 12  
21 people. And if you bring a "yes" answer, it goes to  
22 Question Number 3. Remember that?

23 A. Yes.

24 Q. Okay. So if a person -- if you all at that  
25 point find him guilty of capital murder, then you go

1 through those three questions.

2 A. Okay.

3 Q. Okay. Remember that I told you that you all  
4 can find him guilty of something less, a less criminal  
5 act than what actually he was being charged with.

6 Remember that?

7 A. Yes.

8 Q. Okay. So like an example, if you find him not  
9 guilty of capital murder, but if you find him guilty of  
10 just murder, the sentencing range is from five to 99 or  
11 life.

12 A. Yes.

13 Q. Okay. You're willing to take that into  
14 consideration?

15 A. Yes.

16 Q. If you find him not guilty of capital murder  
17 and not guilty of murder, but you found him guilty of  
18 robbery, the sentencing range is from two years to 20  
19 years. You're willing to go by that sentencing?

20 A. Yes.

21 Q. Special Issue Number 1, what it says up there,  
22 "Is there a probability that the defendant would commit  
23 criminal acts of violence that would constitute a  
24 continuing threat to society?"

25 Remember we spoke to you about probability

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1 would mean that you're looking into the future.

2 A. Correct.

3 Q. Okay. That you look at is there a probability  
4 that this person is going to commit criminal acts of  
5 violence? Do you remember that?

6 A. Yes.

7 Q. Okay. Remember that we spoke to you about  
8 criminal acts of violence is acts against a person.

9 A. Correct.

10 Q. Okay. So if it's acts against -- that they go  
11 into a house to commit theft, that's not a criminal act  
12 of violence. Would you agree with me?

13 A. Yes.

14 Q. Because that's not an act against a person.

15 A. Right.

16 Q. Okay. We went into Question Number 2, "Do you  
17 find from the evidence beyond a reasonable doubt that the  
18 defendant actually caused the death of the deceased;  
19 number two, if he did not actually cause the death of the  
20 deceased, that he intended to kill the deceased; or  
21 number three, that he anticipated that a human life would  
22 be taken?" Do you remember that?

23 A. Yes.

24 Q. Okay. Remember that we gave you a  
25 hypothetical. Mr. Reyes and I go into the Circle K.

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1 A. Yes.

2 Q. Both of us have a gun. We both agree that if  
3 somebody tries to stop us from committing robbery, then  
4 we're going to go ahead and kill somebody.

5 A. Yes.

6 Q. Okay. So in the hypothetical, did I actually  
7 cause the death of an individual? Did I kill the clerk?

8 A. Yes.

9 Q. Did I actually cause the death?

10 A. Yes.

11 Q. Okay. Hypothetical number two -- or the same  
12 hypothetical. Did I intend to kill somebody?

13 A. Yes.

14 Q. Did Mr. Reyes intend to kill somebody?

15 A. No.

16 Q. If we both spoke about it --

17 A. Oh, yes. Yes.

18 Q. Okay. Number three, did I anticipate that  
19 somebody might be killed?

20 A. Yes.

21 Q. Did he anticipate that somebody might be  
22 killed?

23 A. Yes.

24 Q. Okay. Let's change the hypothetical. If both  
25 of us go in to take some cigarettes, we never talk about

1 killing somebody. We never take any weapons. As far as  
2 both of our knowledge, we're not taking any weapons.

3 A. Okay.

4 Q. But then I to myself, I know that I have a gun  
5 and I'm going to take that gun in there with me.

6 Mr. Reyes does not know anything about that.

7 We both go in there. We both take some  
8 cigarettes and we're scot-free. He leaves. Then as I'm  
9 leaving, I take the gun out and I shoot the clerk anyway.  
10 Did I actually cause the death of an individual?

11 A. Yes.

12 Q. Did Mr. Reyes cause the death of an individual?

13 A. No.

14 Q. Did I intend to kill somebody?

15 A. Yes.

16 Q. Did Mr. Reyes intend to kill somebody?

17 A. No.

18 Q. Did I anticipate that maybe somebody would be  
19 killed?

20 A. Yes.

21 Q. Did Mr. Reyes anticipate that?

22 A. No.

23 Q. You're willing to follow this procedure?

24 A. Yes.

25 Q. Then we go into Issue Number 3. If you

1 answered "yes" to Number 1 and Number 2, we go into  
2 Number 3. Remember that in Number 3, what we're asking  
3 you -- if I'm the one that's in trial, is there something  
4 from the evidence, from the circumstances of the offense,  
5 from my character and my background, or from my personal  
6 moral culpability that would require -- that you believed  
7 that I deserved life instead of death?

8 Okay. Remember that we spoke to you and  
9 told you look at all the evidence.

10 A. Yes.

11 Q. Look at the circumstances.

12 A. Yes.

13 Q. Okay. So in all the evidence and  
14 circumstances, you look at did I actually kill the  
15 person?

16 A. Yes.

17 Q. Would you be willing to take that into  
18 consideration?

19 A. Yes.

20 Q. Would you be willing to take into consideration  
21 my educational background?

22 A. Yes.

23 Q. Would you be willing to take into consideration  
24 whether I'm remorseful for what happened?

25 A. Yes.



1           Q.    Okay.  As to Mr. Reyes, the same thing, would  
2 you look at all the information?  You're going to look  
3 into did he actually kill the person?  Did he actually  
4 have the intent to kill the person?  Did he know that  
5 somebody was going to be killed?

6           A.    Okay.

7           Q.    You're willing to follow that procedure?

8           A.    Yes.

9           Q.    And you're willing to take all that into  
10 consideration?

11          A.    Yes.

12          Q.    I spoke to you as to you know that an accused  
13 has the right to remain silent.

14          A.    Yes.

15          Q.    You know that he does not have to speak to a  
16 police officer.

17          A.    Right.

18          Q.    He does not have to testify in court.

19          A.    Right.

20          Q.    And he does not have to present any evidence at  
21 all.

22          A.    Right.

23          Q.    Including questioning any witnesses --

24          A.    Correct.

25          Q.    -- that are testifying.  You're willing to go

1 ahead -- would you agree with me -- let me go back up.  
2 Would you hold it against the accused just because he's  
3 not testifying?

4 A. No.

5 Q. Would you hold it against him just because he  
6 did not give a statement?

7 A. No.

8 Q. Would you hold it against him just because he  
9 did not present any evidence?

10 A. No.

11 Q. You know there's a spousal privilege.

12 A. Right.

13 Q. Okay. This means that the wife does not have  
14 to come in and testify.

15 A. Right.

16 Q. Would you hold it against the accused just  
17 because the wife did not come in to testify?

18 A. No.

19 Q. If the wife was the only one that knew what  
20 exactly happened in this case, would you hold it against  
21 him?

22 A. No.

23 Q. In the back of your mind, would you say, "I  
24 wish she would come over to testify. Just because she  
25 did not come over, I'll go ahead and find him guilty"?

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1 A. No.

2 Q. Okay. If we do not present any evidence, we do  
3 not question any of the witnesses --

4 A. Okay.

5 Q. -- and if the State proved element number one  
6 and number five beyond a reasonable doubt --

7 A. Okay.

8 Q. -- but then in element number six they proved  
9 burglary --

10 A. Okay.

11 Q. -- instead of robbery --

12 A. Okay.

13 Q. -- what would your verdict be at that time?

14 A. Not guilty.

15 Q. Because they didn't prove their case beyond a  
16 reasonable doubt?

17 A. Correct.

18 Q. And you would agree with me that they're the  
19 ones that have to prove the case?

20 A. Yes.

21 Q. We don't have to present any testimony at all.

22 A. Correct.

23 Q. Okay. We spoke about codefendants testifying.  
24 Do you remember what codefendants are?

25 A. Yes.

1           Q.    If Mr. Reyes and I both go into Circle K, if  
2 I'm the one that's on trial --

3           A.    Right.

4           Q.    -- Mr. Reyes is a codefendant.

5           A.    Yes.

6           Q.    Okay. And you -- I believe we spoke to you  
7 about plea bargaining.

8           A.    Yes.

9           Q.    Do you remember what plea bargaining is?

10          A.    Yes.

11          Q.    Okay. What is it?

12          A.    It's when they offer you a lesser sentence.

13          Q.    Okay. And it would be like less years --

14          A.    Right.

15          Q.    -- or maybe probation or maybe a dismissal.

16          A.    Yes.

17          Q.    You would agree with that? So in this case,  
18 like if Mr. Reyes was offered a dismissal just for his  
19 testimony --

20          A.    Okay.

21          Q.    -- would you agree with me that he has a motive  
22 for testifying?

23          A.    Yes.

24          Q.    Okay. Because he's going to get something in  
25 return; is that correct?

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1 A. Right.

2 Q. Okay. Would you agree with me that in some  
3 instances, he might have a motive to lie because he's  
4 going to get something in return?

5 A. Yes.

6 Q. Okay. Would you take this into consideration?

7 A. Yes.

8 Q. Okay. Would you look at him and would you see  
9 what he's getting in return?

10 A. Yes.

11 Q. I spoke to you also that doctors, police  
12 officers, scientists, we're all human; is that correct?

13 A. Correct.

14 Q. And that we all make mistakes.

15 A. Correct.

16 Q. Would you agree with me that sometimes when  
17 somebody makes a mistake, they're trying to go ahead and  
18 cover up their mistake?

19 A. Correct.

20 Q. Okay. Would you agree with me that that would  
21 be a necessity for that person to lie?

22 A. Yes.

23 Q. Okay. So would you take this into  
24 consideration once you listen to the testimony?

25 A. Yes.

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1 Q. I believe you stated you have no relatives in  
2 law enforcement.

3 A. No.

4 Q. And I believe you stated you've never been a  
5 victim --

6 A. No.

7 Q. -- or a family member.

8 A. No.

9 Q. You stated that you've never heard about this  
10 case.

11 A. Correct.

12 Q. And you still haven't formed an opinion?

13 A. No.

14 Q. Have you been -- ever been a juror?

15 A. Yes.

16 Q. Okay. What kind of case was it?

17 A. It was a lawsuit, civil.

18 Q. Okay. And I believe you stated that you all  
19 made a ruling on it.

20 A. Yes.

21 Q. Okay. Is there anything on that that might  
22 affect you to serve on this case --

23 A. No.

24 Q. -- that would make you be biased?

25 A. Oh, no.

1 Q. Okay. You also stated in your questionnaire on  
2 page 16, number 61, I believe, "The punishment fits the  
3 crime." That was your quote.

4 A. Yes.

5 Q. You would be willing to just listen to the  
6 testimony --

7 A. Yes.

8 Q. -- and deciding what actually the punishment  
9 would be at that point?

10 A. Yes.

11 Q. Not just because it's a murder case --

12 A. Oh, no.

13 Q. -- automatically you would give them capital  
14 murder --

15 A. No.

16 Q. -- give them death?

17 A. No.

18 Q. Now, I believe in number 75 you checked off,  
19 "Strongly in favor of capital punishment." Just because  
20 you're in favor of this, you wouldn't automatically give  
21 him --

22 A. No.

23 Q. -- the death penalty?

24 A. No.

25 Q. You wouldn't answer those questions --

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1 A. Right.

2 Q. -- so he could get the death penalty?

3 A. No.

4 Q. You would be willing to listen to all the  
5 evidence --

6 A. Yes.

7 Q. -- and decide on that evidence?

8 A. Yes.

9 MR. GALARZA: That's all I have.

10 Q. (BY MR. GALARZA) Thank you.

11 THE COURT: Okay. I need to ask you to  
12 step out for just a few minutes while I consult with the  
13 lawyers --

14 MS. PERALEZ: Okay.

15 THE COURT: -- on a legal matter. Thank  
16 you.

17 (Prospective juror left the courtroom)

18 THE COURT: Is this juror acceptable to  
19 the State?

20 MS. FISCHER: Yes, she is, Your Honor.

21 THE COURT: To the defense?

22 MR. GALARZA: Yes, she is, Your Honor.

23 THE COURT: All right. Bring her in. Let  
24 me swear her in again to be safe.

25 All right. Let me swear you in one more



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1 time.

2 MS. PERALEZ: Okay.

3 THE COURT: Raise your right hand, please.  
4 Do you solemnly swear that in the case of the State of  
5 Texas against the defendant you will a true verdict  
6 render according to the law and the evidence, so help you  
7 God?

8 MS. PERALEZ: Yes.

9 THE COURT: Okay. We're still not  
10 finished with the process as you can see; and my office  
11 will contact you when you have to come back to serve on  
12 the jury.

13 MS. PERALEZ: Okay.

14 THE COURT: Okay. Thank you very much.

15 MS. PERALEZ: Thank you.

16 MS. FISCHER: Thank you.

17 THE COURT: You're excused to go.

18 We'll be in recess until Ms. Knight  
19 arrives.

20 (Recess taken from 2:10 p.m. to 2:43 p.m.)

21 THE COURT: You may be seated. Bring  
22 Ms. Knight in.

23 THE BAILIFF: Yes, Your Honor.

24 THE COURT: Good afternoon, Ms. Knight.

25 MS. KNIGHT: Good afternoon.